AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda
The public may provide comments on any matter not listed on the Agenda provided that it is within the subject matter jurisdiction of SVCE. Speakers are customarily limited to 3 minutes each, however, the Board Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

Consent Calendar (Action)

1a) Approve Minutes of the June 9, 2021, Board of Directors Meeting

1b) Receive May 2021 Treasurer Report

1c) Adopt Resolution Amending SVCE Conflict of Interest Code to Amend Multiple Titles and Add Multiple Positions

1d) Appoint SVCE Interim Executive Assistant Melody Vega to Serve as Interim SVCE Board Secretary

1e) Adopt Resolution Updating SVCE’s Annual NEM Cash-Out Terms

1f) Adopt Resolution to Authorize the Chief Executive Officer to Execute an Amended Legal Services Agreement with Chapman & Cutler for Preparation of a Preliminary Offering Statement for the Proposed Prepay Transaction

1g) Approve and Authorize Engagement Letter with Hall Energy Law PC for Legal Services Related to SVCE’s Energy and Capacity Transaction Needs and Long-term Power Purchase Agreements Not-to-Exceed $540,000 for a Three-Year Term

1h) Approve Amendment to SVCE Handbook Recognizing Juneteenth as an SVCE Observed Holiday

1i) Authorize the Chief Executive Officer to Execute Amendment to Agreement for FY20-21 with Richards, Watson & Gershon for Legal Services

1j) Receive Quarterly Decarbonization and Grid Innovation Programs Update for Q2 2021

1k) Adopt Resolution Moving Reinstatement of SVCE’s Delinquent Payment Policy to November 2021

1l) Adopt Resolution Endorsing the ZEV2030 Initiative

1m) Approve Finance and Administration Committee Membership of Five Members

1n) Executive Committee Report

1o) Finance and Administration Committee Report
1p) Audit Committee Report
1q) Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report
1r) California Community Power Report

Regular Calendar

2) CEO Report (Discussion)
3) Adopt Resolution Authorizing the Chief Executive Officer to Execute the Power Supply Contract with the California Community Choice Financing Authority and Related Supporting Agreements (Action)
4) Provide Feedback on the FY 2021-22 Proposed Operating Budget, Resolution Authorizing the Chief Executive Officer to Act as Chief Personnel Officer, and Updated Budget and Reserves Policies (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Public Comment on Closed Session
The public may provide comments regarding the Closed Session item(s) just prior to the Board beginning the Closed Session. Closed Sessions are not open to the public.

Convene to Closed Session
Public Employee Performance Evaluation
Title: Chief Executive Officer

Conference with Labor Negotiator
Agency Representatives: Margaret Abe-Koga, Chair, Board of Directors, Liz Gibbons, Vice Chair, Board of Directors
Unrepresented Employee: Chief Executive Officer

Report from Closed Session

Adjourn

svcleanenergy.org
333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Clerk for the Authority at (408) 721-5301 x1005. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.105 ADA Title II).
CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California’s electric flow). Its stated mission is to “operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California’s community choice electricity providers.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community

DASR – Direct Access Service Request – Request submitted by C&I to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer’s home or business through low voltage distribution lines.
**DLAP – Default Load Aggregation Point** – In the CAISO’s electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

**DR – Demand Response** - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

**DWR – Department of Water Resources** – DWR manages California’s water resources, systems, and infrastructure in a responsible, sustainable way.

**ELCC – Effective Load Carrying Capacity** – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

**EPIC – Electric Program Investment Charge** – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

**ERRA – Energy Resource Recovery Account** – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

**ESP – Energy Service Provider** - An energy entity that provides service to a retail or end-use customer.

**EV – Electric Vehicle**

**GHG – Greenhouse gas** - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

**GRC – General Rate Case** – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California’s three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

**GWh – Gigawatt-hour** - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

**IEP – Independent Energy Producers** – California’s oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

**IOU – Investor Owned Utility** – A private electricity and natural gas provider.

**IRP – Integrated Resource Plan** – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

**kW – Kilowatt** – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

**kWh – Kilowatt-hour** – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.
**LCFS – Low Carbon Fuel Standard** – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

**LCR – Local (RA) Capacity Requirements** – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

**LMP – Locational Marginal Price** – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

**Load** - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

**LSE – Load-serving Entity** – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

**NEM – Net Energy Metering** – A program in which solar customers receive credit for excess electricity generated by solar panels.

**NRDC – Natural Resources Defense Council**

**OIR – Order Instituting Rulemaking** - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

**MW – Megawatt** – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

**MWH – Megawatt-hour** – measure of energy

**NP-15 – North Path 15** – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E’s service territory.

**PCC1 – RPS Portfolio Content Category 1** – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as “in-state” renewables

**PCC2 – RPS Portfolio Content Category 2** – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

**PCC3 – RPS Portfolio Content Category 3** – Unbundled REC

**PCIA or “exit fee”** - Power Charge Indifference Adjustment (PCIA) is an “exit fee” based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

**PCL – Power Content Label** – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).

**PD – Proposed Decision** – A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

**Pnode – Pricing Node** – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.
PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.
Call to Order

Chair Abe-Koga called the meeting to order at 7:00 p.m.

Roll Call

Present:
Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Liz Gibbons, City of Campbell
Director Jon Robert Willey, City of Cupertino
Director Zach Hilton, City of Gilroy
Director Neysa Fligor, City of Los Altos
Director George Tyson, Town of Los Altos Hills
Director Rob Rennie, Town of Los Gatos
Director Evelyn Chua, City of Milpitas
Alternate Director Bryan Mekechuk, City of Monte Sereno
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 7:06 p.m.)
Director Tina Walia, City of Saratoga
Director Gustav Larsson, City of Sunnyvale
Director Susan Ellenberg, County of Santa Clara

Absent:
None.

All present Board members participated via teleconference.

Public Comment on Matters Not Listed on the Agenda

Joanna Gardias, MenloSpark and the Fossil Free Buildings Silicon Valley campaign, commented the Fossil Free Buildings campaign launched their electric homes and ambassador program to connect people who have already electrified part or all of their homes with those looking to do so. Gardias requested SVCE support the Home Ambassador program and noted additional information could be found at fossilfreebuildings.org.

Chair Abe-Koga requested staff follow up with Gardias regarding the program.

Consent Calendar

Chair Abe-Koga opened public comment.
No speakers.  
Chair Abe-Koga closed public comment.

MOTION: Director Larsson moved, and Vice Chair Gibbons seconded the motion to approve the Consent Calendar, Items 1a through 1j.

The motion carried by verbal roll call vote.

1a) Approve Minutes of the May 12, 2021, Board of Directors Meeting  
1b) Receive April 2021 Treasurer Report  
1c) Adopt Resolution Approving Resumption of SVCE’s Delinquent Payment Policy in July 2021  
1d) Adopt Resolution Endorsing the Efforts of the Beyond Gasoline Initiative to Reduce Gasoline Consumption by 50% by 2030 in Santa Clara County  
1e) Authorize the Chief Executive Officer to Negotiate and Execute Contracts up to $200,000 and Offer Incentives up to 25% of Salary for Recruiting Purposes for 90 Days  
1f) Executive Committee Report  
1g) Finance and Administration Committee Report  
1h) Audit Committee Report  
1i) Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report  
1j) California Community Power Report

Regular Calendar  

2) CEO Report (Discussion)  
CEO Girish Balachandran provided a CEO report which included information on a June 22, 2021 meeting, Road to 2035, hosted by SVCE which would include a discussion with key state leaders.

Director of Regulatory and Legislative Policy Melicia Charles provided updates on a CPUC decision regarding Integrated Resource Planning (IRP) and SB 612. Director of Regulatory and Legislative Policy Charles responded to board member questions.

Communications Manager Pamela Leonard presented a PowerPoint presentation on summer readiness communications in preparation for flex alerts, emergencies, and public safety power shutoff events during the summer months; staff responded to board member questions.

Vice Chair Gibbons inquired if City Clerks would also be receiving communications regarding summer energy events, as the City of Campbell’s Public Information Officer position is vacant, and the City Clerk is the designated person for community interface; staff confirmed they would make note.

Chair Abe-Koga opened public comment.  
No speakers.  
Chair Abe-Koga closed public comment.

3) Update to SVCE Annual Net Energy Metering Surplus Cashout Policy (Discussion)  
Director of Account Services and Community Relations Don Bray presented a PowerPoint presentation with a request for direction from the SVCE Board of Directors on a tactical update to SVCE’s solar net energy metering (NEM) annual cashout policy for surplus generation; staff recommended moving to a Net Surplus Compensation (NSC)/kWh-based payment. Director of Account Services and Community Relations Bray responded to board member questions.

Chair Abe-Koga opened public comment.

Bruce Karney commented on AB 1139 and noted there is a lot of passion around the issue. Karney requested SVCE work with the solar industry to make sure that once the decision is made to change the
compensation scheme, their software can be updated so that they won’t be giving customers inaccurate estimates of the value that their newly installed solar system will produce.

Chair Abe-Koga closed public comment.

Directors shared their thoughts on staff’s proposed recommendation.

MOTION: Director Tyson moved and Director Fligor seconded the motion to approve the staff recommendation to move to a net surplus compensation (NSC)/kWh-based payment as outlined in the staff presentation.

General Counsel Greg Stepanicich clarified the item was a discussion item to get direction from the Board of Directors for the development of the policy, and direction to staff was to come back with a policy for formal adoption at the August Board of Directors meeting.

The motion was rescinded given the item was not an action item.

Chair Abe-Koga provided a summary that most of the board members were in approval of staff’s recommendation and the item could be placed on consent at the August Board of Directors meeting for a final vote.

4) SVCE Strategic Plan FY 22 Update (Discussion)

CEO Balachandran presented a PowerPoint presentation on the FY 22 Strategic Plan and responded to board member questions.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

Board members shared their thoughts on the proposed updates to the FY 22 Strategic Plan which including feedback on the five focus areas identified.

Director Fligor requested staff perform a deep dive into employee turnover, and noted she was interested in knowing the reasons why the turnover was high and if other CCAs were experiencing the same challenge. Director Fligor recommended looking at staff capacity and workload and revisiting the Work Plan and Strategic Plan to see if there were things that could be pushed out or put on hold.

Vice Chair Gibbons requested a deep dive into how other CCAs provide their CEOs with flexibility on staffing, supported looking at a five-year staffing plan, and encouraged an analysis of how SVCE can retain staff (for example, a longevity bonus). Vice Chair Gibbons provided a staffing example of the City of Campbell’s Police Department.

CEO Balachandran thanked the Board of Directors for their input and noted staff would circle back on some of the questions and issues that were brought up when discussing the Strategic Plan at the August Board of Directors meeting.

**Board Member Announcements and Direction on Future Agenda Items**

Vice Chair Gibbons reported she attended the Silicon Valley Leadership Group’s Climate Forum which included a dynamic discussion on equity and how much the jobs plan would help the people who were not doing well in the economy across the country. Vice Chair Gibbons shared Congresswoman Eshoo has a Student Advisory Board which picked the focus topic of Climate Change and had great ideas that coincide with the programs that Director of Decarbonization and Grid Innovation Programs Aimee Bailey is working on.

Director Hilton announced green infrastructure was incorporated as a priority for the City of Gilroy’s City Council and noted reach codes would be reintroduced to Gilroy’s City Council after summer recess.
Chair Abe-Koga reported she participated in a Metropolitan Transportation Commission workshop where transit agencies shared how they were moving into recovery post COVID and noted one of the common challenges heard in transitioning to zero emissions vehicles was the charging aspect. Chair Abe-Koga noted she was looking forward to partnering more closely with transportation authorities to tackle some of these issues.

Chair Abe-Koga announced the CEO evaluation process was underway and requested the Board of Directors review and respond to emails related to the evaluation.

Chair Abe-Koga announced there would be no Board of Directors meeting in July, and the next meeting would occur in August.

**Adjourn**

Chair Abe-Koga adjourned the meeting at 9:04 p.m.
TREASURER REPORT
Fiscal Year to Date
As of June 30, 2021
(Preliminary & Unaudited)
Issue Date: August 11, 2021

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<td>Customer Accounts</td>
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<td>Accounts Receivable Aging Report</td>
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Financial Highlights for the month of June 2021:

SVCE operations resulted in a negative change in net position for the month of $5.1 million and year-to-date change in net position of negative $17.6 million.

Retail GWh sales for the month landed 1% below budget.

YTD operating margin of negative $3 million or negative 2% is below budget expectations of a 10% operating margin for the fiscal year to date.

Power Supply costs are 7% above budget for the fiscal year year to date.

SVCE is investing ~94.8% of available funds generating year-to-date investment income of $0.22 million.

### Financial Statement Highlights ($ in 000's)

#### Change in Net Position

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<th>Aug</th>
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#### Power Supply Costs

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<th>Aug</th>
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Net Power Costs          | 17,134| 15,075| 17,475| 18,505| 15,539| 22,269| 15,547| 21,747| 26,647|      |     |     | 169,939        |

#### Other

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#### Load Statistics - GWh

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<td>2,779</td>
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<tr>
<td>Retail Sales Budget</td>
<td>325</td>
<td>305</td>
<td>331</td>
<td>320</td>
<td>286</td>
<td>302</td>
<td>279</td>
<td>291</td>
<td>314</td>
<td>345</td>
<td>355</td>
<td>330</td>
<td>3,781</td>
</tr>
</tbody>
</table>

Treasurer Report, May and June 2021
### Other Statistics and Ratios

<table>
<thead>
<tr>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working Capital</td>
<td>$163,155,621</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>6.3</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>-2%</td>
</tr>
<tr>
<td>Expense Coverage Days</td>
<td>217</td>
</tr>
<tr>
<td>Expense Coverage Days w/ LOC</td>
<td>266</td>
</tr>
<tr>
<td>Long-Term Debt</td>
<td>$0</td>
</tr>
<tr>
<td>Total Accounts</td>
<td>274,025</td>
</tr>
<tr>
<td>Opt-Out Accounts (Month)</td>
<td>39</td>
</tr>
<tr>
<td>Opt-Out Accounts (FYTD)</td>
<td>513</td>
</tr>
<tr>
<td>Opt-Up Accounts (Month)</td>
<td>(21)</td>
</tr>
<tr>
<td>Opt-Up Accounts (FYTD)</td>
<td>(338)</td>
</tr>
</tbody>
</table>

### YTD EXPENSES

- Power Supply: 62.9%
- Personnel: 2.3%
- Contract Services: 3.7%
- G & A: 0.9%
- Depreciation: 2.6%

### Retail Sales - Month

- Actual: 22.9
- Budget: 22.6
- FY19/20: 27.4

### Retail Sales - YTD

- Actual: 167.0
- Budget: 176.6
- FY19/20: 214.6

### Controllable O&M - Month

- Actual: 27.9
- Budget: 21.5
- FY19/20: 22.4

### Controllable O&M - YTD

- Actual: 184.8
- Budget: 171.8
- FY19/20: 184.5
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION
As of June 30, 2021

ASSETS

Current Assets
Cash & Cash Equivalents $149,018,536
Accounts Receivable, net of allowance 20,285,341
Accrued Revenue 14,575,389
Other Receivables 434,002
Prepaid Expenses 4,704,316
Deposits 627,320
Restricted cash 4,500,000
Total Current Assets 194,144,904

Noncurrent assets
Capital assets, net of depreciation 330,129
Deposits 45,130
Total Noncurrent Assets 375,259
Total Assets 194,520,163

LIABILITIES

Current Liabilities
Accounts Payable 701,150
Accrued Cost of Electricity 28,693,082
Accrued Payroll & Benefits 679,723
Other accrued liabilities 135,000
User Taxes and Energy Surcharges due to other gov'ts 780,328
Supplier Security Deposits -
Total Current Liabilities 30,989,283

NET POSITION

Net investment in capital assets 330,129
Restricted for security collateral 4,500,000
Unrestricted (deficit) 158,700,751
Total Net Position $163,530,880
# SILICON VALLEY CLEAN ENERGY AUTHORITY

## STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2020 through June 30, 2021

### OPERATING REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$166,203,476</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>738,236</td>
</tr>
<tr>
<td>Other income</td>
<td>70,563</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>$167,012,275</strong></td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>169,939,229</td>
</tr>
<tr>
<td>Contract services</td>
<td>6,848,971</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>4,156,251</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>3,780,046</td>
</tr>
<tr>
<td>Depreciation</td>
<td>69,260</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>$184,793,757</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING INCOME(LOSS)</strong></td>
<td><strong>(17,781,482)</strong></td>
</tr>
</tbody>
</table>

### NONOPERATING REVENUES (EXPENSES)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>221,983</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(53,009)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING REVENUES (EXPENSES)</strong></td>
<td><strong>168,974</strong></td>
</tr>
</tbody>
</table>

### CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>181,143,388</td>
</tr>
<tr>
<td><strong>Net Position at end of period</strong></td>
<td><strong>$163,530,880</strong></td>
</tr>
</tbody>
</table>

Treasurer Report, May and June 2021
## CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from customers</td>
<td>$184,332,822</td>
</tr>
<tr>
<td>Other operating receipts</td>
<td>6,063,526</td>
</tr>
<tr>
<td>Payments to suppliers for electricity</td>
<td>($182,430,677)</td>
</tr>
<tr>
<td>Payments for other goods and services</td>
<td>($11,207,015)</td>
</tr>
<tr>
<td>Payments for staff compensation and benefits</td>
<td>($3,891,897)</td>
</tr>
<tr>
<td>Tax and surcharge payments to other governments</td>
<td>($3,651,754)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>($10,784,995)</strong></td>
</tr>
</tbody>
</table>

## CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance costs paid</td>
<td>($53,009)</td>
</tr>
</tbody>
</table>

## CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of capital assets</td>
<td>($290,178)</td>
</tr>
</tbody>
</table>

## CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>221,983</td>
</tr>
<tr>
<td><strong>Net change in cash and cash equivalents</strong></td>
<td>($10,906,199)</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at beginning of year</strong></td>
<td>164,424,735</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of period</strong></td>
<td><strong>$153,518,536</strong></td>
</tr>
</tbody>
</table>

### Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents (unrestricted)</td>
<td>$149,018,536</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,500,000</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents</strong></td>
<td><strong>$153,518,536</strong></td>
</tr>
</tbody>
</table>
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2020 through June 30, 2021

RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Income (loss)</td>
<td>$(17,781,482)</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>69,260</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>11,172,971</td>
</tr>
<tr>
<td>(Increase) decrease in energy settlements receivable</td>
<td>107,318</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>(226,002)</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>2,941,835</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>(2,113,770)</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>3,705,098</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>(622,006)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued payroll &amp; benefits</td>
<td>263,991</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>(9,638,290)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>125,000</td>
</tr>
<tr>
<td>Increase (decrease) in Energy settlements payable</td>
<td>1,586,535</td>
</tr>
<tr>
<td>Increase (decrease) in taxes and surcharges due to other governments</td>
<td>(375,453)</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>$(10,784,995)</strong></td>
</tr>
</tbody>
</table>
### OPERATING REVENUES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Sales</td>
<td>$166,203,476</td>
<td>$175,898,307</td>
<td>-$9,694,831</td>
<td>$250,747,000</td>
<td>$84,543,524</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>733,553</td>
<td>733,553</td>
<td>4,683</td>
<td>1%</td>
<td>981,000</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>166,941,712</strong></td>
<td><strong>176,631,860</strong></td>
<td><strong>(9,690,148)</strong></td>
<td><strong>251,728,000</strong></td>
<td><strong>84,786,288</strong></td>
</tr>
</tbody>
</table>

### ENERGY EXPENSES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
<td>169,939,229</td>
<td>158,893,398</td>
<td>11,045,831</td>
<td>7.0%</td>
<td>235,237,000</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>(2,997,517)</td>
<td>17,738,462</td>
<td>(20,735,979)</td>
<td>-117%</td>
<td>16,491,000</td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
<td>2,379,722</td>
<td>2,443,696</td>
<td>(63,974)</td>
<td>-3%</td>
<td>3,258,000</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td>880,492</td>
<td>1,009,578</td>
<td>(129,086)</td>
<td>-13%</td>
<td>1,350,000</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>4,156,251</td>
<td>4,686,208</td>
<td>(529,957)</td>
<td>-11%</td>
<td>6,248,000</td>
</tr>
<tr>
<td>Professional Services</td>
<td>1,670,054</td>
<td>2,922,800</td>
<td>(1,252,746)</td>
<td>-43%</td>
<td>3,800,000</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>404,156</td>
<td>615,909</td>
<td>(211,753)</td>
<td>-34%</td>
<td>820,000</td>
</tr>
<tr>
<td>Notifications</td>
<td>71,588</td>
<td>53,000</td>
<td>18,588</td>
<td>35%</td>
<td>100,000</td>
</tr>
<tr>
<td>Lease</td>
<td>334,328</td>
<td>375,000</td>
<td>(40,672)</td>
<td>-11%</td>
<td>500,000</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>1,107,181</td>
<td>801,750</td>
<td>305,431</td>
<td>38%</td>
<td>1,070,000</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>11,003,772</strong></td>
<td><strong>12,907,941</strong></td>
<td><strong>(1,904,169)</strong></td>
<td><strong>-15%</strong></td>
<td><strong>17,146,000</strong></td>
</tr>
</tbody>
</table>

### OPERATING INCOME/(LOSS)

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL OPERATING INCOME/(LOSS)</strong></td>
<td><strong>(14,001,289)</strong></td>
<td><strong>4,830,521</strong></td>
<td><strong>(18,831,810)</strong></td>
<td><strong>-39%</strong></td>
<td><strong>(655,000)</strong></td>
</tr>
</tbody>
</table>

### NON-OPERATING REVENUES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income</td>
<td>247,500</td>
<td>37,500</td>
<td>(12,750)</td>
<td>-34%</td>
<td>50,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td>221,983</td>
<td>240,913</td>
<td>(18,930)</td>
<td>-8%</td>
<td>321,000</td>
</tr>
<tr>
<td>Grant Income</td>
<td>45,813</td>
<td>51,539</td>
<td>(5,726)</td>
<td>-11%</td>
<td>68,000</td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING REVENUES</strong></td>
<td><strong>292,546</strong></td>
<td><strong>329,952</strong></td>
<td><strong>(37,406)</strong></td>
<td><strong>-11%</strong></td>
<td><strong>439,000</strong></td>
</tr>
</tbody>
</table>

### NON-OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
<td>53,009</td>
<td>125,900</td>
<td>(72,891)</td>
<td>-58%</td>
<td>139,000</td>
</tr>
</tbody>
</table>

### CAPITAL EXPENDITURES, TRANSFERS, & OTHER

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>280,213</td>
<td>350,000</td>
<td>(69,787)</td>
<td>-20%</td>
<td>400,000</td>
</tr>
<tr>
<td>Transfer to Programs Fund</td>
<td>5,270,000</td>
<td>5,270,000</td>
<td>0</td>
<td>0%</td>
<td>5,270,000</td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
<td><strong>5,550,213</strong></td>
<td><strong>5,620,000</strong></td>
<td><strong>(69,787)</strong></td>
<td><strong>-1%</strong></td>
<td><strong>5,670,000</strong></td>
</tr>
</tbody>
</table>

### NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended Budget</th>
<th>Variance</th>
<th>FY 2020-21 Amended Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</strong></td>
<td><strong>-$19,311,965</strong></td>
<td><strong>-$585,427</strong></td>
<td><strong>-$18,726,538</strong></td>
<td><strong>3199%</strong></td>
<td><strong>-$6,025,000</strong></td>
</tr>
</tbody>
</table>
### SILICON VALLEY CLEAN ENERGY AUTHORITY

**PROGRAM FUND**

**BUDGETARY COMPARISON SCHEDULE**

October 1, 2020 through June 30, 2021

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$5,270,000</td>
<td>$5,270,000</td>
<td>-</td>
</tr>
</tbody>
</table>

| EXPENDITURES & OTHER USES: | | | |%
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td>6,475,000</td>
<td>3,438,903</td>
<td>3,036,097</td>
</tr>
</tbody>
</table>

**Net increase (decrease) in fund balance**

| Item | AMENDED BUDGET | ACTUAL | |%
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund balance at beginning of period</td>
<td></td>
<td>4,437,570</td>
<td></td>
</tr>
<tr>
<td>Fund balance at end of period</td>
<td></td>
<td>$6,268,667</td>
<td></td>
</tr>
</tbody>
</table>

---

### CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND

**BUDGETARY COMPARISON SCHEDULE**

October 1, 2020 through June 30, 2021

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund *</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

| EXPENDITURES & OTHER USES: | | | |%
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures *</td>
<td>2,170,000</td>
<td>342,593</td>
<td>1,827,407</td>
</tr>
</tbody>
</table>

**Net increase (decrease) in fund balance**

<table>
<thead>
<tr>
<th>Item</th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund balance at beginning of period</td>
<td></td>
<td>8,422,537</td>
<td></td>
</tr>
<tr>
<td>Fund balance at end of period</td>
<td></td>
<td>$8,079,944</td>
<td></td>
</tr>
</tbody>
</table>

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Treasurer Report, May and June 2021
Net Increase (decrease) in available fund balance per budgetary comparison schedule $ (19,311,965)

Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position

- Subtract depreciation expense (69,260)
- Subtract program expense not in operating budget (3,438,903)
- Subtract CRCR expense not in operating budget (342,593)
- Add back transfer to Program fund 5,270,000
- Add back capital asset acquisition 280,213

Change in Net Position (17,612,508)
<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$ 28,096,823</td>
<td>$ 18,883,887</td>
<td>$ 21,158,486</td>
<td>$ 16,807,750</td>
<td>$ 13,766,525</td>
<td>$ 14,983,153</td>
<td>$ 14,553,343</td>
<td>$ 15,160,605</td>
<td>$ 22,772,904</td>
<td>$ 166,203,476</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>115,513</td>
<td>88,930</td>
<td>99,269</td>
<td>103,321</td>
<td>66,705</td>
<td>88,001</td>
<td>63,080</td>
<td>36,482</td>
<td>79,934</td>
<td>738,236</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Income</td>
<td>$ 12,500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>70,563</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$28,212,336</td>
<td>$18,972,817</td>
<td>$21,270,255</td>
<td>$18,664,880</td>
<td>$14,252,456</td>
<td>$15,671,738</td>
<td>$15,288,924</td>
<td>$16,130,761</td>
<td>$22,854,087</td>
<td>$167,012,275</td>
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<td></td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
</tr>
<tr>
<td>General and administration</td>
</tr>
<tr>
<td>Depreciation</td>
</tr>
<tr>
<td>Total operating expenses</td>
</tr>
<tr>
<td>Operating income (loss)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
</tr>
<tr>
<td>Financing costs</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 9,772,613</td>
</tr>
</tbody>
</table>
SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2020 through June 30, 2021

<table>
<thead>
<tr>
<th>Return on Investments</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market</td>
<td>$36,768</td>
<td>$30,271</td>
<td>$29,178</td>
<td>$27,507</td>
<td>$19,293</td>
<td>$20,999</td>
<td>$19,641</td>
<td>$20,211</td>
<td>$18,115</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$221,983</td>
</tr>
</tbody>
</table>

Portfolio Invested

Average daily portfolio available to invest*  
153,022,170  
156,551,866  
169,439,956  
174,590,999  
175,717,184  
174,082,517  
170,111,239  
166,125,235  
152,006,424

Average daily portfolio invested  
144,362,137  
144,437,356  
160,267,489  
161,586,880  
165,502,382  
164,820,497  
159,130,720  
158,535,283  
144,153,810

% of average daily portfolio invested  
94.3%  
92.3%  
94.6%  
92.6%  
94.2%  
94.7%  
93.5%  
95.4%  
94.8%

Detail of Portfolio

<table>
<thead>
<tr>
<th>Opening Rate</th>
<th>June Rate</th>
<th>Carrying Value</th>
<th>Interest Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market - River City Bank</td>
<td>1.26%</td>
<td>0.15%</td>
<td>$136,620,991</td>
</tr>
</tbody>
</table>

* Note: Balance available to invest does not include lockbox or debt service reserve funds.
# Accounts Receivable Aging Report

## Age Summary

<table>
<thead>
<tr>
<th></th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>0 to 30 days</strong></td>
<td>81.5%</td>
<td>79.8%</td>
<td>75.4%</td>
<td>75.9%</td>
<td>74.2%</td>
<td>69.7%</td>
<td>70.8%</td>
<td>70.2%</td>
<td>74.5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>31 to 60 days</strong></td>
<td>7.2%</td>
<td>6.7%</td>
<td>10.0%</td>
<td>7.1%</td>
<td>6.6%</td>
<td>7.7%</td>
<td>5.8%</td>
<td>6.1%</td>
<td>5.8%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>61 to 90 days</strong></td>
<td>3.3%</td>
<td>3.6%</td>
<td>3.8%</td>
<td>4.0%</td>
<td>3.9%</td>
<td>5.3%</td>
<td>4.9%</td>
<td>3.8%</td>
<td>2.8%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>91 to 120 days</strong></td>
<td>2.0%</td>
<td>2.1%</td>
<td>2.7%</td>
<td>2.8%</td>
<td>3.2%</td>
<td>3.0%</td>
<td>3.3%</td>
<td>3.1%</td>
<td>2.3%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Over 120 days</strong></td>
<td>6.0%</td>
<td>7.7%</td>
<td>8.1%</td>
<td>10.2%</td>
<td>12.2%</td>
<td>14.4%</td>
<td>15.2%</td>
<td>16.9%</td>
<td>14.6%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Accounts Receivable Days
- **31 Days**
- **$21,131,283**
- **TOTAL DUE**
- **Bad Debt % (Budget)**
- **1%**

---

Treasurer Report, May and June 2021
Staff Report – Item 1c

Item 1c: Adopt Resolution Amending SVCE Conflict of Interest Code to Amend Multiple Titles and Add Multiple Positions

From: Girish Balachandran, CEO

Prepared by: Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

RECOMMENDATION
Adopt Resolution 2021-15 amending the SVCE conflict of interest code to amend multiple titles and add multiple positions in the list of designated position for filing.

BACKGROUND
Shortly after the formation of SVCEA, the Board of Directors adopted a conflict-of-interest code as required by the Political Reform Act, commencing at Government Code Section 81000. The code lists the positions within the Authority that are required to file statements of economic interests (Form 700). As a joint powers authority with members located entirely within Santa Clara County, the County Board of Supervisors is the conflict code reviewing body that is required to approve all changes to the conflict-of-interest code. County Counsel has advised that when positions are added or removed from the conflict code, a new resolution must be adopted approving a new conflict of interest code with the added or removed position(s).

At the May 12, 2021 Board meeting, the Board of Directors approved the request for multiple title changes and the addition of multiple new positions by adopting Resolution 2021-11 amending the positions chart, job classifications, and salary schedule.

ANALYSIS & DISCUSSION
SVCE staff and general counsel have identified the following positions as needing to report financial interests based on the decisions he/she will be making:

- Associate Legislative Analyst 2
- Associate Manager of Decarbonization & Grid Innovation Programs 2
- Associate Power Analyst 1
- Associate Power Resources Planner 1
- Financial Analyst 2
- Policy Analyst 2
- Power Analyst 1
- Power Contracts & Settlements Manager 1
- Power Settlements & Compliance Analyst 1
- Senior Manager of Decarbonization & Grid Innovation Programs 2
- Senior Policy Analyst 2
- Senior Power Analyst 1
- Senior Power Resources Planner 1

In addition, the Manager of Energy Services position (formerly Manager of Account Services) is an existing position required to file in the code.
In accordance with the requirements of the Political Reform Act and the County of Santa Clara, a new conflict of interest code must be adopted by resolution which includes the newly created or identified position as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to SVCE’s code to reflect the above changes in titles and additions of new positions.

**STRATEGIC PLAN**
Not applicable.

**ALTERNATIVES**
None.

**FISCAL IMPACT**
There is no fiscal impact as a result of amending a position title and adding a position to SVCE’s Conflict of Interest Code.

**ATTACHMENT**
1. Resolution 2021-15 Amending the Authority’s Conflict of Interest Code to Amend Multiple Titles and Add Multiple Positions
RESOLUTION NO. 2021-15

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY’S CONFLICT OF INTEREST CODE TO AMEND MULTIPLE TITLES AND ADD MULTIPLE POSITIONS

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, the Political Reform Act, Government Code Section 81000, *et seq.*, (the “Political Reform Act”) requires each public agency in California, including the Authority, to adopt and promulgate a conflict of interest code; and

WHEREAS, Government Code Section 87306 requires each public agency in California to amend its conflict of interest code when change is necessitated by a change in circumstances, including the creation of new positions and relevant changes to the duties assigned to existing positions; and

WHEREAS, the Board of Directors of the Authority has adopted a conflict of interest code, and has amended this code as appropriate due to changed circumstances, with the most recent code adopted by Resolution 2020-41; and

WHEREAS, the Board of Directors, after consultation with the County of Santa Clara as its code reviewing body, desires to amend the list of designated positions in Appendix A by amending multiple titles and adding multiple positions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2021-09 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

BE IT FURTHER RESOLVED that The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years following notice and instructions from the County of Santa Clara as the code-reviewing body for the Authority, in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code are required, the Authority shall submit a response as indicated in the instructions provided by the County of Santa Clara no later than October 1st of the same year, stating that amendments to the Authority’s Conflict of Interest Code are not required.
ADOPTED AND APPROVED this 11th day of August 2021, by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Cupertino</td>
<td>Director Willey</td>
<td></td>
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<tr>
<td>City of Gilroy</td>
<td>Alternate Director Armendariz</td>
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<tr>
<td>City of Los Altos</td>
<td>Director Fligor</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
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</tr>
<tr>
<td>City of Milpitas</td>
<td>Director Chua</td>
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<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
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<tr>
<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>City of Saratoga</td>
<td>Director Walia</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>Director Larsson</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chair

ATTEST:

Clerk
SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code § 81000, et seq., hereinafter referred to as the Act) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (“FPPC”) has adopted a regulation (2 California Code of Regulations § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the Act. Therefore, the terms of 2 California Code of Regulations § 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the text here designating positions and establishing disclosure categories shall constitute the conflict of interest code of the Silicon Valley Clean Energy Authority (“Authority”).


Individuals holding a designated position shall file their Statements of Economic Interests with the Authority’s Filing Official, which will make the Statements available for public inspection and reproduction subject to Government Code section 81008. If Statements are received in signed paper format, the Authority’s Filing Official shall make and retain a copy and forward the original Statements to the Filing Officer, the County of Santa Clara Clerk of the Board of Supervisors. If Statements are electronically filed using the County of Santa Clara’s Form 700 e-filing system, both the Authority’s Filing Official and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed Statements simultaneously.
## DESIGNATED POSITIONS

<table>
<thead>
<tr>
<th>Designated Position</th>
<th>Assigned Disclosure Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member of Board of Directors</td>
<td>1</td>
</tr>
<tr>
<td>Alternate Member of Board of Directors</td>
<td>1</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>1</td>
</tr>
<tr>
<td>Chief Financial Officer &amp; Director of Administrative Services</td>
<td>1</td>
</tr>
<tr>
<td>Finance and Administration Committee Member</td>
<td>2</td>
</tr>
<tr>
<td>General Counsel</td>
<td>1</td>
</tr>
<tr>
<td><strong>Account Energy Services Manager</strong></td>
<td>2</td>
</tr>
<tr>
<td>Administrative Services Manager</td>
<td>2</td>
</tr>
<tr>
<td>Associate Legislative Analyst</td>
<td>2</td>
</tr>
<tr>
<td><strong>Associate Manager of Decarbonization &amp; Grid Innovation Programs</strong></td>
<td>2</td>
</tr>
<tr>
<td>Associate Power Analyst</td>
<td>1</td>
</tr>
<tr>
<td>Associate Power Resources Planner</td>
<td>1</td>
</tr>
<tr>
<td>Communications Manager</td>
<td>2</td>
</tr>
<tr>
<td>Director of Account Services &amp; Community Relations</td>
<td>2</td>
</tr>
<tr>
<td><strong>Director of Decarbonization &amp; Grid Innovation Programs</strong></td>
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<tr>
<td>Director of Power Resources</td>
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<tr>
<td>Director of Regulatory &amp; Legislative Policy</td>
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<tr>
<td><strong>Financial Analyst</strong></td>
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<tr>
<td>Management Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Manager of Decarbonization &amp; Grid Innovation Programs</td>
<td>2</td>
</tr>
<tr>
<td>Position</td>
<td>Count</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Senior Government Affairs Manager</td>
<td>2</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
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<tr>
<td>Policy Analyst</td>
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<tr>
<td>Power Analyst</td>
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<tr>
<td>Power Resources Manager</td>
<td>1</td>
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<tr>
<td>Power Resources Planner</td>
<td>1</td>
</tr>
<tr>
<td>Power Contracts &amp; Settlements Manager</td>
<td>1</td>
</tr>
<tr>
<td>Power Settlements &amp; Compliance Analyst</td>
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</tr>
<tr>
<td>Principal Policy Analyst</td>
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<td>Principal Power Analyst</td>
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<tr>
<td>Rates Manager</td>
<td>2</td>
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<tr>
<td>Senior Financial Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Senior Government Affairs Manager 2</td>
<td>2</td>
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<tr>
<td>Senior Manager of Decarbonization &amp; Grid Innovation Programs</td>
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<tr>
<td>Senior Policy Analyst</td>
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<tr>
<td>Senior Power Analyst</td>
<td>1</td>
</tr>
<tr>
<td>Senior Power Resources Planner</td>
<td>1</td>
</tr>
<tr>
<td>Senior Rates Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Consultant</td>
<td>3</td>
</tr>
<tr>
<td>Newly Created Position</td>
<td>*</td>
</tr>
</tbody>
</table>

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority’s conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly
created position, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

As soon as the Authority has a newly created position that must file Statements of Economic Interests, the Authority’s Filing Official shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County’s electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk’s office shall enter the actual position title of the newly created position into eDisclosure and the Authority’s Filing Official shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file Statements of Economic Interests, the Authority shall update this conflict-of-interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Section 87306.)
Designated positions must report financial interests in accordance with the assigned disclosure categories.

**Category 1:** Persons in this category shall disclose:

(a) investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority; and

(b) all interests in real property located: in whole or in part within the jurisdiction of the Silicon Valley Clean Energy Authority, or within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

**Category 2:** Persons in this category shall disclose investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority.

**Category 3:** Each Consultant, as defined for purposes of the Political Reform Act and applicable regulations, shall disclose pursuant to the broadest disclosure category in the Authority’s conflict of interest code subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of

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1 As defined in FPPC Regulation 18700.3, “consultant” means an individual who (1) makes governmental decisions, such as whether to approve a rate, rule, or regulation; to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization; to adopt or approve a plan, design, report, study; or to adopt or approve policies, standards, or guidelines for the Authority; (2) serves in a staff capacity with the Authority, and in that capacity participates in making governmental decisions by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review; or (3) performs the same or substantially all the same duties for the Authority that would otherwise be performed by an individual holding a designated position in this Code.
disclosure requirements. The Chief Executive Officer’s written determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.
Staff Report – Item 1d

Item 1d: Appoint SVCE Interim Executive Assistant Melody Vega to Serve as Interim SVCE Board Secretary

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 8/11/2021

RECOMMENDATION
Appoint SVCE Interim Executive Assistant Melody Vega to serve as SVCE’s Interim Board Secretary until the return of Board Clerk/Executive Assistant Andrea Pizano from leave.

BACKGROUND
Pursuant to Section 4.11.2 of the Joint Powers Agreement, the Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

ANALYSIS & DISCUSSION
With Board Clerk/Executive Assistant and current Board Secretary Andrea Pizano going on leave in August, Melody Vega will be providing support in her absence. Due to the nature of the tasks of Board Secretary, including retaining and keeping official records of the authority, staff would like to suggest Melody Vega serve in this role until Board Clerk Pizano returns in December. On a different note, and as information for the Board, SVCE has hired Dorothy Roberts via Regional Government Services to provide interim Board Clerk duties for the SVCE Board and SVCE Executive Committee meetings.

The annual appointment of Board Secretary will occur in January 2022.

STRATEGIC PLAN
N/A

ALTERNATIVE
The Board can elect to appoint an alternative individual for the role of SVCE Board Secretary.

FISCAL IMPACT
No fiscal impact as a result of the appointment.
Staff Report – Item 1e

Item 1e: Adopt Resolution Updating SVCE’s Annual NEM Cash-Out Terms

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations

Date: 8/11/2021

RECOMMENDATION
Staff requests that the SVCE Board adopt Resolution 2021-16 to modify the Annual Cash-Out terms in the Net Energy Metering Rate Schedule NEM-SVCE as documented in Attachment 2.

BACKGROUND
At the January 11, 2017, meeting of the SVCE Board, the Board approved a resolution establishing the Silicon Valley Clean Energy Net Energy Metering Rate Schedule NEM-SVCE, effective February 1, 2017.

This NEM-SVCE rate schedule includes terms for Annual Cash-Out, applicable annually to NEM customers with positive NEM credit balances as of April, or customers leaving SVCE service during other months of the year. Under the existing terms, SVCE pays out NEM credit balances at full retail value, up to $5,000/year.

Since the NEM-SVCE rate schedule was established in 2017, annual cash-out payments have continued to grow, totaling nearly $800,000 in 2020, and $900,000 in 2021. These amounts are significantly higher than what would be paid out under PG&E’s wholesale-based net surplus compensation (NSC) policy. PG&E’s policy values excess solar production at a wholesale energy cost (generally 2.5 to 3.0 cents/kWh) and applies only to net kWh generated over the preceding year.

A proposed update to the NEM Annual Cash-Out terms was discussed at the April 23, 2021, meeting of the SVCE Executive Committee, and subsequent meeting of the SVCE Board on June 9, 2021. Details of the recommendation are described in Attachment 1, Staff Presentation to SVCE BOD ‘Proposed Update to SVCE’s Annual NEM Surplus Cash-Out Policy’. Among the Board and Executive Committee there was general agreement with the proposed update, modifying the NEM Annual Cash-Out terms to:

- reduce the overall level of SVCE NEM annual cash-out compensation
- remain competitively favorable with PG&E’s NEM annual surplus compensation policy
- offer enhanced compensation for income-qualified CARE/FERA NEM customers

ANALYSIS & DISCUSSION
As noted above, PG&E’s policy values excess solar production at a wholesale energy cost (generally 2.5 to 3.0 cents/kWh) and applies only to net kWh generated over the preceding year. SVCE’s current practice of paying for surplus solar at a full retail rate results in a much higher level of compensation. As an example, in April 2020, SVCE paid out $791,000 in NEM Cash-Out compensation, whereas PG&E’s wholesale-based surplus compensation policy would have paid out only $64,000. In addition, in 2020, 68% of SVCE’s NEM Cash-Out payments went to customers in SEVI quartiles 1 and 2 (higher income), and 32% to customers in SEVI quartiles 3 and 4 (lower income).

Other neighboring CCAs have recently changed their NEM annual cash-out policies from retail-based compensation to wholesale-based compensation. MCE and Sonoma Clean Power now pay out net surplus
compensation at 2 times the published PG&E wholesale NSC rate, and San Jose Clean Energy pays out at 1.25 times the PG&E NSC rate.

The Board and Executive Committee discussed different options in terms of how SVCE could change its policy and agreed reducing payouts while maintaining a multiple to PG&E was important from a competitive standpoint. Additionally, providing additional support to low-income customers was desired to help address equity issues with NEM.

Accordingly, the recommended changes to the SVCE policy will be to value surplus generation at 2 times the PG&E Net Surplus Compensation (NSC) rate, and for income-qualified CARE/FERA customers, at 2.5 times the PG&E NSC rate. For all SVCE customers, surplus compensation will continue to be capped at a maximum of $5,000 per year. These changes will be applied after the end date of the customer March-April 2022 billing cycle, meaning the current retail-based cash-out policy will apply through the April 2022 cash-out period before being replaced by the new NSC-based cash-out terms. These policy changes are reflected in sections d and e of Attachment 2, Electric Schedule NEM-SVCE 2021.

**STRATEGIC PLAN**
This recommendation balances SVCE strategic plan goals described in Goal 13 'commit to maintaining a strong financial position', and Goal 10 'empower customers with the awareness, knowledge and resources to make effective clean energy choices'.

**ALTERNATIVE**
Staff is open to suggestions from the Board of Directors, but feedback from previous meetings has been considered for this resolution.

**FISCAL IMPACT**
Modifying the NEM annual surplus cash-out policy as described is estimated to reduce SVCE expenditures for excess solar production by an estimated $500-600k/year.

**ATTACHMENT**
1. Resolution 2021-16, Updates to the Annual NEM Surplus Cash-Out Policy
2. Electric Schedule NEM-SVCE 2021
3. June 9, 2021, Staff Presentation to SVCE BOD 'Proposed Update to SVCE's Annual NEM Surplus Cash-Out Policy’
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2021-16

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY UPDATING THE ANNUAL NEM SURPLUS CASHOUT POLICY

WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, at the January 11, 2017 Board of Directors Meeting, the Board adopted Electric Schedule NEM-SVCE, establishing SVCE’s net energy metering policy and associated rates; and

WHEREAS, since 2017, annual SVCE payouts have continued to increase under the SVCE Annual Cash-Out terms of Electric Schedule NEM-SVCE, and now significantly exceed payouts under PG&E’s comparable annual net surplus compensation policy; and

WHEREAS, customers receiving annual payments are predominantly from higher-income areas, with 70% of customers receiving payments from the top two socioeconomic census quartiles; and

WHEREAS, SVCE seeks to reduce annual expenses on NEM surplus cash-outs, remain competitive with PG&E’s NEM surplus compensation policy, and introduce additional NEM surplus credit for low-income customers.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve, determine, and order as follows:

Section 1. Update SVCE’s Annual Cash-Out terms for NEM customers as described in Attachment 1, Electric Schedule NEM-SVCE 2021, to pay NEM customers annual surplus compensation for surplus kilowatt hours based on a multiple of PG&E’s wholesale net surplus compensation rate, set at two times for non-CARE/FERA NEM customers, and two and one-half times for CARE/FERA customers, up to a maximum of $5,000 in a year.

Section 2. The updated Cash-Out terms described in NEM-SVCE-2021 will
become effective as of the end-date of a customer’s March-April 2022 billing cycle, so that the original terms of the annual NEM cash-out policy will apply through conclusion of the April 2022 annual cash-out cycle, and the new terms will be in effect thereafter.

PASSED AND ADOPTED this 11th day of August 2021, by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<tbody>
<tr>
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<td>Director Willey</td>
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<td>City of Gilroy</td>
<td>Alternate Director Armendariz</td>
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<td>Director Fligor</td>
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<td>City of Monte Sereno</td>
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<td>Director Martinez Beltran</td>
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<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
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<td>City of Saratoga</td>
<td>Director Walia</td>
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<tr>
<td>City of Sunnyvale</td>
<td>Director Larsson</td>
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________________________________________________________________________

                Chair

ATTEST:

________________________________________________________________________

Andrea Pizano, Board Secretary

ATTACHMENT
Electric Schedule NEM-SVCE
ELECTRIC SCHEDULE NEM-SVCE
NET ENERGY METERING

Updated August 11, 2021

APPLICABILITY:
This Net Energy Metering Schedule (NEM-SVCE) is applicable to enrolled Silicon Valley Clean Energy (SVCE) customers who use an eligible Renewable Electrical Generation Facility (REGF), as defined in the applicable PG&E Electric Schedule NEM or its Successor Tariff NEM2, that is located on the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with PG&E’s transmission and distribution systems, and is intended primarily to offset part or all of the customer’s own electrical requirements (hereinafter “eligible customer-generator” or “customer”).

This NEM-SVCE rate schedule is available to customers that satisfy all necessary application, interconnection and inspection requirements as described in the applicable PG&E Electric Schedule NEM or NEM2, and that take service under an associated PG&E NEM tariff schedule. This NEM-SVCE schedule also applies to customers served under NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation) and Multiple Tariff facilities as described by PG&E Electric Schedules NEM and NEM2. For more information on PG&E’s NEM tariffs, visit https://bit.ly/understanding-pge-net-metering

PG&E NEM Tariff Terms and Conditions apply. SVCE NEM customers are also subject to the terms, conditions, and billing procedures of PG&E for services other than electric generation.

TERRITORY: The entire Silicon Valley Clean Energy (SVCE) service area.

RATES: All rates charged under this NEM-SVCE schedule will be in accordance with the eligible customer-generator’s otherwise-applicable SVCE rate schedule (OAS). An eligible customer-generator served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to SVCE or PG&E – any applicable PG&E charges will be addressed in a corresponding PG&E tariff. Charges for energy (kWh) supplied by SVCE, will be based on the net metered usage in accordance with this NEM-SVCE schedule.

BILLING: Customers with NEM service will be billed by SVCE as follows:

a) For a customer with Non-Time of Use (TOU) Rates:
The cost/(credit) associated with any net usage/(production) during the customer’s normal billing cycle shall be determined as follows:
If the eligible customer-generator is a “Net Consumer,” as determined by usage exceeding production during a discrete billing cycle, the eligible customer-generator will be billed in accordance with the eligible customer-generator’s OAS.

If the eligible customer-generator is a “Net Generator,” as determined by production exceeding usage during a discrete billing cycle, the net energy production shall be valued in accordance with the eligible customer-generator’s OAS. The value of all net energy production during the billing cycle shall be credited to SVCE customers as described in Section (c).

If the eligible customer-generator has upgraded to GreenPrime, SVCE’s premium 100% renewable electric generation service, net energy consumption will be billed at the applicable GreenPrime rate, and net energy production will be valued at the applicable GreenPrime rate.

b) For a customer with TOU Rates:

If the eligible customer-generator is a Net Consumer (as defined above) during any discrete TOU period, the net kWh consumed during such period shall be billed in accordance with the eligible customer-generator’s OAS.

If the eligible customer-generator is a Net Generator (as defined above) during any discrete TOU period, net energy production during each TOU period shall be valued in consideration of the eligible customer-generator’s OAS, applying OAS rates to the quantity of energy produced within each TOU period. The value of all net energy production during the billing cycle shall be credited to SVCE customers as described in Section (c).

If the eligible customer-generator has upgraded to GreenPrime, SVCE’s premium 100% renewable electric generation service, net energy consumption will be billed at the applicable GreenPrime rate, and net energy production will be valued at the applicable GreenPrime rate.

c) Monthly Settlement of SVCE Charges/Credits:

NEM customers will receive a statement in their monthly PG&E bills indicating any accrued charges for their usage during the billing cycle. Customers who have accrued net production credit during previous billing cycles will see this credit applied against current generation charges. Any remaining balance will be due and must be paid in consideration of the due date and remittance advice reflected on each PG&E bill.

When a customer’s net energy production results in a net bill credit during any billing cycle, the value of any net energy production during the billing cycle shall be noted on the customer’s bill and carried over as a bill credit for use in subsequent billing period(s).
d) SVCE Annual Cash-Out – effective through customer’s March-April 2022 billing cycle end date.

Each April, all current SVCE NEM customers with a production credit balance greater than $0 will be compensated for the full value of the accrued credit balance, up to a maximum of $5,000. The production credit balance will be determined as of the final date of the customer’s March-April billing cycle. Credit balances in excess of $5,000 are forfeited.

For NEM production credit balances of $100 or greater, this payment will be made by check issued from SVCE to the customer. For NEM credit balances of less than $100, the amount will be applied as a credit on the customer’s electricity bill. Customers receiving payment under the SVCE Cash-Out process will have their production credit balance reset to zero as of the start of their April-May billing cycle.

Customers who close their electric account through PG&E or move outside of the SVCE service area prior to the April billing cycle of each year are also eligible for the SVCE Annual Cash-Out process. Payments will be made by check issued from SVCE to the customer.

e) SVCE Annual Cash-Out – effective after end-date of customer’s March-April 2022 billing cycle)

During April of each year, current SVCE NEM customers with a positive production credit balance (e.g. greater than $0) will be compensated for net surplus kWh produced over the course of the preceding twelve months at two times the applicable annual net surplus compensation rate (NSC Rate), and SVCE NEM customers enrolled in the income-qualified CARE or FERA programs will be compensated at two and one half times the applicable annual NSC Rate. The production credit balance will be determined as of the final date of the customer’s March-April billing cycle. For all SVCE NEM customers, annual net surplus compensation is capped at $5,000, and any amount in excess of $5,000 is forfeited.

The applicable annual NSC Rate is defined as the simple rolling average of PG&E’s default load aggregation point (DLAP) price from 7a.m. to 5 p.m., for a 12-month period, beginning in April of the preceding year through March of the current year. The annual NSC Rate is typically in the range of 2.5 to 3 cents/kWh and will vary year to year based on energy market prices. SVCE shall use this annual NSC Rate as the basis for calculating applicable annual Cash-Out net surplus compensation payments, and any other applicable NSC payments, such as for account close-outs prior to the next annual Cash-Out in April.

For non-CARE/FERA NEM customers, net surplus compensation is calculated by multiplying any net surplus electricity (kWh) by the annual NSC Rate x 2, and for CARE/FERA NEM customers, by multiplying any net surplus electricity (kWh) by the annual NSC Rate x 2.5.

For annual net surplus compensation amounts greater of $100 or more, payment will be made by check issued from SVCE to the customer. For annual net surplus compensation amounts of
less than $100, compensation will be applied as a credit to the customer’s bill. For all customers receiving annual net surplus compensation, their NEM production credit balance will be re-set to zero as of the beginning of their April-May billing cycle.

Customers who close their electric account through PG&E or move outside of the SVCE service area prior to the March-April billing cycle of each year are eligible for net surplus compensation under the annual SVCE Annual Cash-Out process. For any SVCE NEM customer that moves service or otherwise closes their account, net surplus compensation is capped at $5,000 and any amount in excess of $5,000 is forfeited. Net surplus compensation, if any, will be paid by check issued from SVCE to the customer.

f) Return to PG&E Bundled Service:

SVCE customers with NEM service may opt out and return to PG&E bundled service at any time. Customers should be advised that PG&E will perform a true-up of their account at the time such customers return to PG&E bundled service. As described in PG&E Electric Rule 23, certain SVCE customers returning to PG&E service may receive Transitional Bundled Service (TBS) for a limited period of time; TBS will expose such customers to various market price risks – please review PG&E’s applicable electric rules and tariffs for additional information.

If a SVCE NEM customer opts-out of the SVCE program and returns to bundled service, that customer may request the direct payment option, described above in Section (d), for any generation credits that remain on the account, provided that such request is received by SVCE within 90 calendar days of the customer’s return to PG&E service.

g) PG&E NEM Services:

SVCE NEM customers are subject to PG&E’s terms, conditions and billing procedures for any nongeneration services, as described in PG&E’s Electric Schedule NEM and related PG&E tariff options addressing NEM service. Customers should be advised that while SVCE reconciles payment/credit balances for generation on a monthly basis, PG&E will continue to assess charges for delivery, transmission and other services. Most NEM customers will receive an annual true-up from PG&E for these non-generation services. Customers are encouraged to review PG&E’s most up-to-date NEM tariffs, which are available on PG&E’s website: https://bit.ly/understanding-pge-net-metering
Proposed Update to SVCE’s Annual NEM Surplus Cashout Policy

SVCE Board of Directors
Staff is seeking BOD direction on a tactical update to SVCE’s solar NEM annual cashout policy for surplus generation.

SVCE pays customers the full retail rate for rooftop solar generation, credited toward utilization over the course of the year.

For 13% of SVCE NEM customers who generate more than they use annually, a significant premium is being paid via the “April cashout”

Not related to broader CPUC discussion of future ‘NEM 3.0’ policy

Complications

SVCE financial pressure due to PCIA increases
Equity & incentive-related concerns

Goals

Reduce NEM April cashout expenditures for surplus generation
Modify NEM cashout policy, but still compare favorably to PG&E
Introduce equity component
SVCE currently provides a generous NEM annual surplus payout ("cashout") relative to PG&E.

<table>
<thead>
<tr>
<th>SVCE</th>
<th>PG&amp;E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each April, customers with a NEM generation credit balance &gt;$100 are paid the full retail value of their credit (~7 cents/kWh or higher), up to $5k</td>
<td>Each year on the customer’s annual true-up date, any retail generation credit balance is zeroed out and forfeited</td>
</tr>
<tr>
<td>Customers with a $0-$100 retail credit balance have their balance rolled forward into the following year</td>
<td>For these customers, if they’ve generated more kWh during the year than they have consumed, they are paid a ‘net surplus compensation rate’ (NSC) for excess kWh</td>
</tr>
<tr>
<td></td>
<td>The NSC value varies, depending on the average daytime wholesale cost of power (currently 2.7 cents/kWh)</td>
</tr>
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</table>
In April 2020, SVCE made NEM cashout payments to ~13% of NEM customers – those with annual retail credit balances >$100.

### NEM Cashout Customers and Amounts, 2020

<table>
<thead>
<tr>
<th>Class</th>
<th>Number of Customers</th>
<th>Total Cash-out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>97</td>
<td>$134,444</td>
</tr>
<tr>
<td>Residential</td>
<td>2,639</td>
<td>$656,870</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
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</tbody>
</table>
Separately, a general update to California NEM policy is now under discussion in the CPUC’s NEM 3.0 proceeding.

**NEM Policy Concerns**

- Cost shift from NEM customers to non-NEM customers
- Benefits of on-site solar more accessible to wealthier customers, single-family homeowners
- Changes to NEM must encourage more equitable access to solar and storage
- Changes to NEM must be reasonable and cannot hurt the growth of BTM solar industry – “gradualism” being encouraged
In 2020, most NEM customers receiving April cashout payments were in higher-income SEVI census tract quartiles.

<table>
<thead>
<tr>
<th>SEVI Quartile</th>
<th>Residential Customers</th>
<th>% of Customers</th>
<th>$ Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEVI 1</td>
<td>798</td>
<td>34%</td>
<td>$213,439</td>
</tr>
<tr>
<td>SEVI 2</td>
<td>888</td>
<td>34%</td>
<td>$213,848</td>
</tr>
<tr>
<td>SEVI 3</td>
<td>519</td>
<td>21%</td>
<td>$128,463</td>
</tr>
<tr>
<td>SEVI 4</td>
<td>302</td>
<td>11%</td>
<td>$68,473</td>
</tr>
</tbody>
</table>

- SVCE has ~23,000 residential NEM customers
- ~1,000 are CARE/FERA
If SVCE switched to an annual cashout method utilizing NSC for excess kWh, the savings would be substantial.

### Moving from Retail to NSC-based Annual Cashout

<table>
<thead>
<tr>
<th></th>
<th>(based on 2020 volumes)</th>
<th>Annual Savings vs 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>SVCE’s current retail policy</td>
<td>$791,000</td>
<td></td>
</tr>
<tr>
<td>Net surplus compensation at PG&amp;E NSC for accounts with surplus balance &gt;$100</td>
<td>$64,000</td>
<td>$727,000</td>
</tr>
<tr>
<td>Net surplus compensation at G&amp;E NSC for accounts with surplus balance &gt;$100</td>
<td>$209,000</td>
<td>$582,000</td>
</tr>
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</table>
Recently, neighboring CCAs have moved to switch their retail NEM cashout policies to utilize an NSC/kWh payment.

<table>
<thead>
<tr>
<th>CCA</th>
<th>NSC Rate</th>
<th>Other ‘Adders’</th>
</tr>
</thead>
<tbody>
<tr>
<td>3CE</td>
<td>2.5X</td>
<td>Currently proposing change to “4.7 cents for TOU rates</td>
</tr>
<tr>
<td>MCE</td>
<td>2X</td>
<td></td>
</tr>
<tr>
<td>SJCE</td>
<td>1.25X</td>
<td></td>
</tr>
<tr>
<td>SCP</td>
<td>2X</td>
<td>Adds 1 cent/kWh to value of retail generation used in NEM</td>
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<tr>
<td>EBCE</td>
<td>2.7X</td>
<td></td>
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<tr>
<td>SCP</td>
<td>5.4X</td>
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</table>

*Current NSC rate: 2.7 cents/kWh

**Note:**
- CARE/FERA cashed out at full retail, plus 1 cent/kWh
In lieu of today’s retail NEM balance cashout payment, staff recommends moving to an NSC/kWh-based payment.

Recommendation

- Establish a new annual cashout policy, effective immediately after the April 2022 cashout:
  - 2X NSC value (e.g. 5.4 cents)
  - 2.5X NSC for CARE/FERA customers (e.g. 6.75 cents)
  - calcs based on excess kWh produced by customers with positive annual retail balance

- April 2022 ‘cutover’ allows for billing system changes, continuation of TOU transition bill protection for affected NEM customers, clear and timely customer communications

- Target August BOD meeting for approval of changes to NEM tariff cashout policy, effective April 2022, so related savings can be included in the FY22 budget
Staff Report – Item 1f

Item 1f: Adopt Resolution to Authorize the Chief Executive Officer to Execute an Amended Legal Services Agreement with Chapman & Cutler for Preparation of a Preliminary Offering Statement for the Proposed Energy Prepay Transaction

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO & Director of Administrative Services
Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

RECOMMENDATION
Adopt Resolution 2021-17 authorizing the Chief Executive Officer (CEO) to execute a First Amendment to the Legal Services Agreement with Chapman and Cutler LLP to prepare and issue the Preliminary Offering Statement and final Offering Statement for the municipal bonds to be issued for the prepay transaction, and to increase the compensation by $100,000, for a total amount not to exceed $335,000, which will be shared by EBCE and SVCE.

BACKGROUND
The Chief Executive Officer (CEO) and staff have been evaluating the benefits of participating with East Bay Community Energy (EBCE) in an Energy Prepayment Transaction. As EBCE and Silicon Valley Clean Energy (SVCE) prepare a prepay transaction through which municipal bonds will be issued, it is required that a Preliminary Offering Statement (POS) be composed to market the bonds, and that a final Offering Statement (OS) be composed and printed/distributed following the pricing of the bonds. Chapman & Cutler, serving as Issuer’s Counsel and Disclosure Counsel already for the prepay transaction, is highly experienced and positioned to produce the POS and OS for the EBCE-SVCE prepay.

ANALYSIS AND DISCUSSION
The existing Consulting Services Agreement with Chapman & Cutler only covers the scope of their work as Issuer’s and Disclosure Counsel. When the conduit JPA is formed, the legal services agreement will be assigned to the JPA and the legal fees will be paid as follows:

- Issuer's Counsel and Disclosure Counsel (Chapman): $335,000
  - Contingent on a successful prepay execution and paid from the bond proceeds. If the transaction does not close, fees will be charged by Issuer’s and Disclosure Counsel at an hourly rate of $750/hour up to a maximum out of pocket cost of $30,000 that would be shared by SVCE and EBCE. Thus, the maximum obligation to SVCE if the prepay transaction does not close is $15,000. If the transaction closes, SVCE will be paying no legal fees.

FINANCIAL IMPACT
The cost of this additional scope is anticipated to be less than $100,000, payable from the proceeds of the prepay bonds. That is to say, there is no out-of-pocket cost to SVCE; the cost will be paid out of the savings realized from the prepay transaction. Further, that cost will be split between EBCE and SVCE.
ATTACHMENT
1. Resolution 2021-17 Authorizing the Chief Executive Officer to Execute an Amended Legal Services Agreement with Chapman & Cutler LLP for Preparation of a Preliminary Offering Statement for the Proposed Energy Prepay Transaction
SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2021-17

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDED LEGAL SERVICES AGREEMENT WITH CHAPMAN & CUTLER LLP FOR PREPARATION OF A PRELIMINARY OFFERING STATEMENT FOR THE PROPOSED ENERGY PREPAY TRANSACTION

WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, in order to achieve a significant reduction in power procurement costs, Authority and East Bay Community Energy (EBCE) are considering entering into an energy prepayment transaction involving the issuance of tax-exempt bonds by a third party conduit agency for which there would be no recourse against the Authority; and

WHEREAS, specialized legal counsel is required to draft the necessary documents for such transaction; and

WHEREAS, Orrick, Herrington & Sutcliffe and Chapman & Cutler LLP were respectively selected as proposed legal counsel through a solicitation issued jointly with EBCE in June 2020.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve, determine, and order as follows:

Section 1. The Chief Executive Officer is hereby authorized to negotiate and execute an amended Legal Services Agreement with Chapman & Cutler LLP for the preparation of a preliminary offering statement for the proposed prepay transaction. If the prepay transaction is executed and closes, the legal fees shall not exceed $335,000 and shall be paid from the bond proceeds. If the prepay transaction is not executed, legal fees shall be paid on an hourly fee basis to only Chapman & Cutler in an amount not to exceed $30,000 that will be shared equally with EBCE.
PASSED AND ADOPTED this 11th day of August 2021, by the following vote:

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______________________________
Chair

ATTEST:

______________________________
Andrea Pizano, Board Secretary
Staff Report – Item 1g

**Item 1g:** Approve and Authorize Engagement Letter with Hall Energy Law PC for Legal Services Related to SVCE’s Energy and Capacity Transaction Needs and Long-term Power Purchase Agreements Not-to-Exceed $540,000 for a Three-Year Term

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources
Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

**RECOMMENDATION**
Approve and authorize the Chief Executive Officer to execute the attached Hall Energy Law PC Engagement Letter (“New Agreement”) for legal representation related to energy and capacity transactions and negotiations and implementation of long-term Power Purchase Agreements on behalf of Silicon Valley Clean Energy Authority in an amount Not-to-Exceed (“NTE”) $540,000 for a three-year term through June 30, 2024.

**BACKGROUND**
In January 2019, SVCE executed a three-year Engagement Letter Agreement with Hall Energy Law PC for legal support services effective January 14, 2019 through January 13, 2022 with an NTE amount of $100,000 (“Prior Agreement”). In January 2020, the SVCE Board authorized the Amended and Restated Agreement increasing the NTE to $300,000 to cover increased legal support needed to carryout negotiations and execution of several power related activities. The terms, conditions, and scope of work of the Amended and Restated Agreement remained the same.

In December 2020, the SVCE Board authorized Amendment No. 1 to the Amended and Restated Agreement, increasing the NTE to $400,000, with all other terms, conditions, and scope of work remaining unchanged. Since approval of Amendment No. 1, additional negotiations requiring legal counsel support have arisen, and the existing NTE will be expended by the end of this FY2020-21, at which point no further work may be performed unless the NTE is increased.

**ANALYSIS & DISCUSSION**
Due to increased number of agreements being negotiated and the complexity of new resource adequacy requirements and rules, extensive outside legal counsel is anticipated for the next three years. Specifically, around SVCE’s procurement of energy, renewable energy, and related products, including the review, drafting, revision, negotiation, amendment, and finalization of:

(i) EEI Master Agreements and Cover Sheets, amendments to the WSPP agreement, confirmations, and any supporting credit documentation such as parent guarantees and letters of credit (collectively, the “Energy Supply Agreements”)

(ii) the deposit account control agreement, intercreditor and collateral agency agreement, and security agreement entered into by SVCEA in its 2016 Energy Services Request for Proposals (the “Lockbox Agreements”)
(iii) development of a Coordinated Operations Agreement with Central Coast Community Energy ("3CE") for administration and implementation of long-term power purchase and sale agreements (PPAs) (the "COA")

(iv) continued support in connection with the PPAs already acquired, and additional negotiations, if any, arising from the 2017 Joint RFO, the 2019 Joint RFO, and the 2020 Joint RFO with 3CE ("Joint RFO Additional Follow-Up")

(v) continued support including the review, drafting, revision, negotiation, and finalization of the Prepaid Energy Sales Agreement with Morgan Stanley ("MS Prepay"), and

(vi) procurement of additional renewable energy, resource adequacy, energy storage, and miscellaneous legal advice and analysis, or services related to any of the foregoing ("Other Services").

Given Hall Energy Law PC’s extensive history with and knowledge of SVCE’s needs, its understanding of all SVCE’s existing supply contracts and its relevant experience in negotiating PPAs on SVCE’s behalf, Hall Energy Law PC, continues to be the law firm which can best provide legal support for power supply contracts and negotiations. With a significant need for ongoing power-related legal support services, both parties believe a new engagement letter to be more appropriate than a second amendment.

**STRATEGIC PLAN**

The recommendation strongly supports Power Supply Goals #5 – "Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner," and #6 – "Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives," of the Board adopted 2020 Strategic Plan.

**ALTERNATIVE**

SVCE has other law firms on retainer, however the amount of time and cost to bring new counsel up to speed on SVCE’s agreements and negotiations would not be cost effective, therefore staff does not feel there is a prudent alternative than to continue using Hall Energy Law PC to continue supporting the PPAs negotiated under the 2017, 2019, and 2020 Joint RFOs and to provide on-going legal support for the lockbox agreements, power prepay agreements, and power supply contracts.

**FISCAL IMPACT**

Enough funds have been budgeted for legal support services as part of the current fiscal year. Appropriations of funds through the term of the Agreement will be requested in upcoming budgets.

**ATTACHMENTS**

1. Engagement Letter for Hall Energy Law PC Representation of Silicon Valley Clean Energy Authority, dated July 1, 2021
July 1, 2021

VIA EMAIL

Silicon Valley Clean Energy Authority
Attention: Girish Balachandran
333 W. El Camino Real, Suite 330
Sunnyvale, CA 94087
Email: girish@svcleanenergy.org

Re: Hall Energy Law PC Representation of Silicon Valley Clean Energy Authority

Dear Girish:

We are pleased that you have requested Hall Energy Law PC (the “Firm”) to continue to provide legal services to Silicon Valley Clean Energy Authority (“SVCEA”) and we thank you for the opportunity to be of assistance.

The Firm and SVCEA entered into an engagement letter dated December 18, 2019, as amended by that certain Amendment No. 1 dated December 11, 2020 (the “Prior Agreement”). Once fully executed, this engagement letter (the “Agreement”) shall amend, replace and supersede in its entirety the Prior Agreement.

This Agreement sets forth the scope of our engagement, the financial terms of our engagement, and all other aspects of this engagement, as follows:

1. **Scope of Engagement.** By means of this Agreement, SVCEA is engaging the Firm to continue to provide the following legal services: SVCEA’s procurement of energy, renewable energy and related products, including the review, drafting, revision, negotiation, amendment, and finalization of (i) EEI Master Agreements and Cover Sheets, amendments to the WSPP agreement, confirmations and any supporting credit documentation such as parent guarantees and letters of credit (collectively, the “Energy Supply Agreements”), (ii) the deposit account control agreement, intercreditor and collateral agency agreement, and security agreement entered into by SVCEA in its 2016 Energy Services Request for Proposals (the “Lockbox Agreements”), (iii) development of a Coordinated Operations Agreement with Central Coast Community Energy (“3CE”) for administration and implementation of long-term power purchase and sale agreements (PPAs) (the “COA”), (iv) continued support in connection with the PPAs already acquired, and additional negotiations, if any, arising from the 2017 Joint RFO, the 2019 Joint RFO, and the 2020 Joint RFO with 3CE (“Joint RFO Additional Follow-Up”), (v) continued support including the review, drafting, revision, negotiation and finalization of the Prepaid Energy Sales Agreement with Morgan Stanley (“MS Prepay”), and (vi) procurement of additional renewable energy, resource adequacy, energy storage, and miscellaneous legal advice and analysis, or services related to any of the foregoing (“Other Services”). The legal services described in (i) through (vi) above are collectively referred to herein as the “Engagement.”
2. **Term.** The term of this Agreement shall commence on August 12, 2021 and will remain in full force and effect through June 30, 2024 (the “Term”), subject to termination by either SVCEA or the Firm by providing thirty (30) days’ written notice of its intent to terminate this Agreement, subject to payment of any amounts owed for services previously rendered and, if requested by SVCEA, completion of any partially completed projects.

3. **Fees and Hourly Rates.** Our billing practice is to charge for our legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals involved. These hourly rates are based upon these professionals’ experience, expertise, and standing. I will be the attorney responsible for the performance of the Engagement and my hourly rate for this work is $595/hr.

The Firm’s hourly rates are reviewed by us from time to time, typically once a year, and any new rates would be implemented immediately after they are adopted, but no earlier than October 1, 2021, and would apply to legal services rendered after the effective date of the new rates which will be reflected on SVCEA’s bill.

The Firm and SVCEA agree that SVCEA will be responsible for only fifty-five percent (55%) of the total fees associated with the following portion of the Engagement: 2017 Joint RFO.

The Firm and SVCEA agree that SVCEA will be responsible for only fifty percent (50%) of the total fees associated with the following portions of the Engagement: 2019 Joint RFO, 2020 Joint RFO, and the COA.

The total amount of legal services for the Engagement for the Term shall not exceed five hundred forty thousand dollars ($540,000) for the Term of the Agreement (the “NTE Cap”) without prior written approval of SVCEA. SVCEA will not be responsible for any fees incurred in excess of the NTE Cap unless expressly authorized by SVCEA in writing. If additional legal services are required that extend beyond the NTE Cap, SVCEA and the Firm shall agree in writing to the scope and cost of such additional services.

We will charge for all activities undertaken in providing legal services to SVCEA under this Agreement, including but not limited to the following: conferences, including preparation and participation; preparation and review of correspondence and other documents; legal research and telephone calls, including calls with SVCEA, other attorneys or persons involved with this matter, and governmental agencies.

4. **Additional Services and Outside Expenditures.** If our legal representation requires additional services provided by vendors, we will obtain SVCEA’s advance approval before incurring any such additional services on SVCEA’s behalf. SVCEA will be required either to pay for these outside additional services directly, or to reimburse us if we make payment for these services on SVCEA’s behalf. When there are substantial expenditures involving vendors, we will require either that SVCEA pay those sums to us before we expend them, that SVCEA provide an advance deposit for such expenditures, or that SVCEA directly contract with and pay the vendor. SVCEA will not be billed for any internal Firm costs incurred on SVCEA’s behalf, such as telephone (including long distance charges), word processing, secretarial overtime, firm couriers, postage (including FedEx, UPS or similar overnight delivery services), printing and photocopying performed in-house.

5. **Monthly Statements and Payment Terms.** Our practice will be to send a monthly statement of our charges for legal services and for reimbursement of payments made on SVCEA’s behalf, if any, for outside additional services. The detail in the monthly statement will inform SVCEA of the nature and progress of our work and of the charges and expenditures being incurred.
Unless otherwise agreed, each monthly statement is fully due and payable upon receipt, but in no event later than thirty (30) days after its issuance date.

We specifically reserve the right to withdraw from representation of SVCEA and to cease performing immediately all services if we do not receive full payment of any amounts owed to us within forty-five (45) days of any statement.

6. **Withdrawal From Representation.** The attorney-client relationship is one of mutual trust and confidence. If you have any questions at all about the provisions of this Agreement, we invite your inquiries. We encourage our clients to inquire about any matter relating to our engagement agreements or monthly statements which may be in any way unclear or appear unsatisfactory. If SVCEA does not meet its obligation of timely payments or deposits under this Agreement, we reserve the right to withdraw from SVCEA’s representation on that basis alone, subject of course to any required judicial, administrative, or other approvals.

This Agreement is also subject to termination by either party for any reason, by providing thirty (30) days’ written notice. If there were to be such a termination, however, SVCEA would remain liable for all unpaid charges for services provided and expenditures advanced or incurred.

7. **Duties Upon Termination of Active Representation.** Upon termination of our active involvement in a particular matter for which we had previously been engaged, we will have no further duty to inform SVCEA of future developments or changes in law which may be relevant to such matter in which our representation has terminated. Further, unless SVCEA and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had been engaged.

8. **Document Storage Policies.** The Firm’s policy with regard to documents and other materials at the conclusion of a matter is to maintain them in storage for a period of no more than ten (10) years. All documents and other materials in our file will then be destroyed or discarded without notice to SVCEA. Accordingly, if there are any documents or other materials SVCEA wishes to have retrieved from its file at the conclusion of a matter, it will be necessary for SVCEA to advise us of that request to ensure that they are not destroyed.

9. **Disclaimer of Guarantee.** Nothing in this Agreement should be construed as a promise or guarantee about the outcome(s) of any matter which we are handling on SVCEA’s behalf. Our comments about the outcome(s) of SVCEA’s matter are expressions of opinion only. If we should provide SVCE with an estimate of the fees and costs which may be incurred in connection with our representation of SVCEA, it is important that you understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be, subject to the NTE Cap set forth in Section 3 above.

10. **Future Matters.** Unless otherwise agreed in writing between us, all other matters referred to us for representation shall be governed by the terms of this Agreement.

11. **Entire Agreement.** This Agreement contains all terms of the agreement between us applicable to our representation of SVCEA, and may not be modified except by a written agreement signed by both of us.

12. **Future Conflict.** Our undertaking to represent SVCEA in the above matters will not act as a bar so as to prevent us from representing any existing or future client with respect to a commercial
transaction involving SVCEA, so long as any written waivers required by the California Rules of Professional Conduct are obtained.

13. **Client.** The Firm’s clients for the purpose of our representation are only the persons and entities identified in this Agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any of their board members, officers, directors, agents, or employees.

If this Agreement correctly sets forth SVCEA’s understanding of the scope of the services to be rendered to SVCEA by the Firm and if all of the terms set forth in this Agreement are satisfactory, then please sign this Agreement and return it to me so that we will be engaged as SVCEA’s legal counsel. If the scope of services described is incorrect or if the terms set forth are not satisfactory to you, please let us know in order that we can discuss either aspect.

I look forward to continuing to work with SVCEA and thank you once again for the opportunity to be of service.

Sincerely,
Stephen Hall

Principal

I have read and understand the contents of this Agreement and consent to the Firm representing SVCEA on the terms set forth in this Agreement.

SILICON VALLEY CLEAN ENERGY AUTHORITY:

Dated: ________________, 2021

By: _______________________
Name: Girish Balachandran
Title: CEO
Staff Report – Item 1h

Item 1h: Approve Amendment to SVCE Handbook Recognizing Juneteenth as an SVCE Observed Holiday

From: Girish Balachandran, CEO

Prepared by: Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

RECOMMENDATION
Staff recommends the Board of Directors (“Board”) approve the amendment to SVCE’s Employee Handbook to recognize Juneteenth as an SVCE observed holiday.

BACKGROUND
On June 17, 2021, President Biden signed legislation establishing Juneteenth (June 19th) as a national holiday commemorating the end of slavery.

ANALYSIS & DISCUSSION
Given the significance of the Juneteenth holiday, SVCE would like to acknowledge and celebrate it.

STRATEGIC PLAN
N/A

ALTERNATIVE
Staff is open to suggestions from the Board.

FISCAL IMPACT
No fiscal impact as a result of observing the additional holiday and reflecting this in the employee handbook.

ATTACHMENT
1. Amended SVCE Employee Handbook – Proposed August 2021
Issue Date: December 1, 2016
Last Updated: November 2020
Proposed Revision: August 11, 2021

This Handbook issued to

___________________________________

In the future, please insert revision pages and discard the old pages.

333 W. El Camino Real, Suite 290
Sunnyvale, CA 94086
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WELCOME TO SILICON VALLEY CLEAN ENERGY

October 1, 2018

Dear Employee:

Thank you for joining our team. We are confident you will find our agency a dynamic and rewarding place to work and we look forward to having you on our team.

The following pages contain information regarding many of the policies and procedures of SVCE. As a public agency, SVCE has policies and procedures in place in accordance with state and federal laws that may differ from non-profit agencies and private companies.

The procedures, practices, policies and benefits described here may be modified or discontinued from time to time. You will be informed of any changes as they occur.

SVCE values the many talents and abilities of its employees and seeks to foster an open, creative and dynamic environment where employees and the agency can thrive. If you would like further information or have questions about any of the policies and procedures outlined in this handbook, please feel free to bring them to my attention.

Regards,

Girish Balachandran
Chief Executive Officer
Chapter 1-INTRODUCTORY POLICIES

Introduction & Future Revisions

As an employee of SVCE, we hope you will find your employment to be both rewarding and challenging. Because the quality of our employees is the key to our success, we carefully select our new employees. In turn, we expect employees to contribute measurably to the success of the agency.

This Handbook is designed to acquaint you with our policies and benefits. It is NOT a contract and must not be read to create contractual obligations. Additionally, nothing in this employee handbook, or in any other personnel document, including benefit plan descriptions, creates or is intended to create a promise or representation of continued employment for any employee.

In the future we may, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Our Working Relationship

Employment with SVCE is employment at-will. This means that employment may be terminated with or without cause and with or without advance notice at any time by you or us. Nothing in this employee handbook or in any document or statement shall limit the right to terminate employment. No supervisor or employee of the agency has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will. Only the CEO of the agency has the authority to make any such agreement, with approval by the board at a duly noticed public meeting, and only as a written agreement.

What Silicon Valley Clean Energy Expects From You

SVCE needs your help in making each working day enjoyable and rewarding. Your first responsibility is to know your own duties and how to do them promptly, safely, correctly and pleasantly. Secondly, you are expected to cooperate with management and your fellow employees and to maintain a good team attitude. How you interact with fellow employees and our customers, and how you accept direction can affect the success of your department. In turn, the performance of one department can impact the entire service offered by SVCE. Consequently, whatever your position, you have an important assignment: perform every task to the very best of your ability.
We are dedicated to making SVCE an agency where you can approach your supervisor, or any member of management, to discuss any problem or question. We expect you to voice your opinions and contribute your suggestions to improve the quality of SVCE.

Remember, you help create the pleasant and safe working conditions that SVCE intends for you.

**Employee Relations Policy**

SVCE’s established employee relations policy is to:

1. Provide an exciting, challenging, and rewarding workplace and experience.
2. Select people on the basis of skill, training, ability, attitude, and character without discrimination with regard to race (including traits historically associated with race, such as, but not limited to, hair texture and protective hairstyles like braids, locks, and twists), color, religious creed, gender, genetic information, genetic characteristics, gender identity, gender expression, transgender status, religion, marital status, military status, age, national origin or ancestry, physical or mental disability, medical condition, sexual orientation, or any other consideration made unlawful by federal, state or local laws.
3. Develop competent people who understand and meet our objectives, and who accept the ideas, suggestions and constructive feedback from fellow employees.
4. Assure employees an opportunity to discuss any problems with their supervisor or the Director of Finance and Administration of SVCE.
5. Make prompt and fair assessment of any complaints, which may arise in the everyday conduct of our business, to the extent that it is practical.
6. Respect individual rights, and treat all employees with courtesy and consideration.
7. Promote employees on the basis of their ability and merit.
8. Keep all employees informed of the progress of SVCE as well as the agency’s overall aims and objectives.
9. Do all these things in a spirit of friendliness and cooperation so that SVCE will continue to be known as “a great place to work.”
Open Communication Policy

SVCE encourages you to discuss any issue you may have with a co-worker directly with that person. If a resolution is not reached, please arrange a meeting with your supervisor to discuss any concern, problem, or issue that arises during the course of your employment. Conversations will be considered confidential where appropriate and we will always seek to protect the privacy of employees. We will not retaliate against you for appropriate usage of open communication channels. It is counterproductive to a harmonious workplace for you to create or repeat office rumors or gossip. It is more constructive to consult your supervisor immediately with any questions.

Equal Employment Opportunity

SVCE strives to comply with all applicable laws prohibiting discrimination, and we consider ourselves to be an equal opportunity employer. We make employment decisions on the basis of merit and business need. We want to have the best available person in every job. Agency policy prohibits unlawful discrimination in employment, recruiting and selection based on race (including traits historically associated with race, such as, but not limited to, hair texture and protective hairstyles like braids, locks, and twists), color, religious creed, gender, genetic information, genetic characteristics, gender identity, gender expression, transgender status, religion, marital status, military status, age, national origin or ancestry, physical or mental disability, medical condition, sexual orientation, or any other consideration made unlawful by federal, state or local laws. All such discrimination is unlawful.

Promotions are based on an employee’s past performance and qualifications to assume additional responsibilities determined without regard to, or consideration of, the individual’s status. The agency takes all personnel actions without regard to an individual’s protected status. When necessary under the California Fair Employment and Housing Act and the Americans with Disabilities Act, the agency will reasonably accommodate an employee or applicant with a disability if the employee or applicant is otherwise qualified to safely perform all of the essential functions of the position.

We are committed to complying with all applicable laws providing equal employment opportunities. This commitment applies to all persons involved in the operations of the agency and prohibits unlawful discrimination by any employee of the agency.

We will make reasonable accommodations when requested to comply with applicable laws ensuring equal employment opportunities to qualified individuals with a disability. These accommodations will be made for the known physical or mental disability of an applicant or an employee unless undue hardship would result in a direct threat to the health and safety or other job-related considerations exist.
SVCE will engage in a timely, good-faith, interactive process to determine a reasonable accommodation, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

SVCE is committed to providing a safe and welcoming workplace environment, free from discrimination based on religion or religious practices (including religious dress and grooming practices, such as religious clothing or hairstyles). Employees requiring an accommodation for a religious belief or practice should promptly notify their supervisor and the Director of Finance and Administration to discuss the need for an accommodation.
The Americans with Disabilities Act and Fair Employment and Housing Act

The Americans with Disabilities Act (ADA) is a comprehensive federal civil rights law specifically for individuals with physical and mental disabilities. It gives civil rights protection to individuals with these disabilities like those provided by other civil rights laws to individuals on the basis of race (including traits historically associated with race, such as, but not limited to, hair texture and protective hairstyles like braids, locks, and twists), color, religious creed, gender, genetic information, genetic characteristics, gender identity, gender expression, transgender status, religion, marital status, military status, age, national origin or ancestry, medical condition, sexual orientation, or any other consideration made unlawful by federal, state or local laws. California has enacted the Fair Employment and Housing Act (FEHA) that also provides protection for individuals with disabilities.

The ADA and FEHA broadly define a person with a disability as an individual who:

1. Has a physical or mental impairment that limits one or more of his or her major life activities (e.g., walking, speaking, seeing, hearing, etc.);
2. Has a record of such impairment;
3. Is regarded as having such an impairment.

The ADA and FEHA assure that employers like the company will offer equal employment opportunities for qualified individuals who may have a physical or mental disability, but can still perform the essential functions of the job.

The company will provide reasonable accommodations to those employees protected by the ADA and FEHA. Employees who qualify as disabled should discuss the need for a possible accommodation with their supervisor, if this is necessary to maintain acceptable performance. The company does not discriminate against individuals with physical or mental disabilities with regard to any employment practice, term, condition, or privilege of employment.

If you have any questions, you should contact your supervisor.
Unlawful Harassment

We intend to provide a work environment that is pleasant, professional, and free from intimidation, hostility or other offenses which might interfere with work performance. Harassment of any sort - verbal, physical, or visual will not be tolerated. This includes both sexual harassment as well as harassment based on an employee’s status in a protected class. These classes include, but are not necessarily limited to race (including traits historically associated with race, such as, but not limited to, hair texture and protective hairstyles like braids, locks, and twists), color, religion, religious creed, age, gender, genetic information, genetic characteristics, gender identity, gender expression, transgender status, sexual orientation, national origin or ancestry, physical or mental disability, medical condition, marital status, veteran status, military status, or any other consideration made unlawful by federal, state or local laws. This policy also prohibits unlawful harassment based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy extends to unlawful harassment of, or by vendors, independent contractors, customers, or others with whom employees may come in contact with during their work for SVCE.

Our workplace is not limited to our agency facilities, but may also include customer and vendor facilities, as well as anywhere a business-related function, or social function sponsored by the agency, is taking place.

What Is Workplace Harassment?

Workplace harassment can take many forms. It may be, but is not limited to, words, signs, offensive jokes, cartoons, pictures, posters, e-mail jokes, social media communication, messages or statements, pranks, intimidation, physical assaults or contact, or violence. It may also take the form of other vocal activity including derogatory statements not directed to the targeted individual but taking place within their hearing. Other prohibited conduct includes written material such as notes, photographs, cartoons, articles of a harassing or offensive nature, and taking retaliatory action against an employee for discussing or making a harassment complaint. In addition, this policy covers all individuals in the workplace, such as fellow employees, supervisors, outside customers, vendors, independent contractors, paid or unpaid interns, volunteers, applicants, government officials, other professionals, or other non-employees who conduct business with our agency.
What Is Sexual Harassment?
Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature. When this conduct creates an offensive, hostile and intimidating working environment, it may prevent an individual from effectively performing the duties of their position. It also encompasses such conduct when it is made a term or condition of employment or compensation, either implied or stated and when an employment decision is based on an individual's acceptance or rejection of such conduct.

It is important to note that harassment crosses age and gender boundaries and cannot be stereotyped. Sexual harassment may involve two women or two men, or can occur among a mixed-gender group of people. Harassment may exist on a continuum of behavior. For instance, one example of harassment may be that of an employee showing offensive pictures to another employee. A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to, or customarily accepted for, the accomplishment of routine work in and around the workplace.

Generally, two categories of harassment exist. The first, "quid pro quo," may be defined as an exchange of sexual favors for improvement or continuance in your working conditions and/or compensation. The second category, "hostile, intimidating, offensive working environment," can be described as a situation in which unwelcome sexual advances, requests for sexual favors, or verbal or other conduct creates an intimidating or offensive environment. Examples of a hostile, intimidating, and offensive working environment includes, but is not limited to, pictures, cartoons, symbols, or apparatus found to be offensive and which exist in the workspace of an employee. This behavior does not necessarily link improved working conditions in exchange for sexual favors. An employee may have a claim of harassment even if he or she has not lost a job or other economic benefit. The law prohibits any form of protected basis harassment that impairs an employee’s working ability or emotional well-being at work.

We prohibit any employee from retaliating in any way against anyone who has raised any concern about sexual harassment or discrimination against another individual. We will investigate any complaint of sexual harassment and will take immediate and appropriate disciplinary action if sexual harassment has been found within the workplace.

Responsibility
All SVCE employees, and particularly supervisors, have a responsibility for keeping our work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to their immediate supervisor, the Director of Finance and Administration or the designated management representative with whom they feel comfortable. When management becomes aware of the existence of harassment, it is obligated by law to take prompt and appropriate action, whether or not the victim wants the agency to do so.
**Reporting**

All reported incidents of prohibited harassment will be investigated in an effective, thorough and objective manner that provides all parties with appropriate due process and reaches reasonable conclusion based on the evidence collected. The investigation will be completed and a determination regarding the reported harassment will be made and communicated to both the complainant and to the accused harasser(s). If you believe you have been harassed by any agency employee, customer, or other business contact, confront the harasser and ask him/her to stop. While we encourage you to communicate directly with the alleged harasser and make it clear that the harasser's behavior is unacceptable, offensive or inappropriate, it is not required that you do so. It is essential, however, to notify the Director of Finance and Administration immediately regarding any incidents of harassment, even if you are not sure the offending behavior is considered harassment. If the Director of Finance and Administration is not available, please contact your immediate supervisor. At any time if you feel that you are in immediate harm and do not have time to contact either the Director of Finance and Administration or your supervisor, seek assistance from any management representative.

Appropriate investigation and disciplinary action will be taken. All reports will be promptly investigated with due regard for the privacy of everyone involved. However, confidentiality cannot be guaranteed. Any employee found to have harassed any employee will be subject to severe disciplinary action up to and including termination of employment. SVCE will also take any additional action necessary to appropriately remedy the situation. Retaliation of any sort will not be permitted. No adverse employment action will be taken for any employee making a good faith report of alleged harassment or participating in an investigation.

In addition, the agency will take appropriate action to remedy any loss to the complaining employee resulting from the harassment. The individual who makes unwelcome advances, threatens or in any way harasses another employee may be personally liable for such actions and their consequences.

All employees must report any incidents immediately so that complaints can be quickly and fairly resolved. The California Department of Fair Employment and Housing (“DFEH”) investigates and may prosecute complaints of harassment. Whenever an employee thinks he or she has been harassed or that he or she has been retaliated against for resisting or complaining, that employee may file a complaint with the DFEH. The nearest DFEH office is listed in the telephone book. The agency also has a brochure on sexual harassment which is available to all employees for additional information.
Chapter 2-EMPLOYMENT POLICIES AND PRACTICES

Classification of Employees

At the time you are hired, you will be classified as either “exempt” or “non-exempt.” This is necessary because, by law, employees in certain types of jobs are entitled to overtime pay for hours worked in excess of forty (40) hours per workweek. These employees are referred to as “non-exempt” in this employee handbook.

Exempt employees are those employees whose duties and responsibilities allow them to be “exempt” from provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws. If you are an exempt employee, you will be advised that you are in this classification at the time you are hired, transferred, or promoted. Participation in our benefits programs may be affected by your employment status or classification. All employees of SVCE whether exempt, non-exempt, full-time, part-time, or temporary are employed at-will.

1. The EXEMPT status applies to certain administrative, professional, salespersons and executive staff. Exempt employees qualify for exemption from overtime regulations under state and federal law and their salaries already take into account that they may work long hours.

2. The NON-EXEMPT status applies to all other regular employees. Non-exempt employees are covered by regulations in the State of California wage orders and receive extra pay for overtime work (as described in the overtime section of this employee handbook).

   Employees working in non-exempt positions are compensated for the actual amount of time spent on their job and are entitled to receive time and one-half (1 ½) their regular rate of pay for each hour worked in excess of forty (40) hours in a work week.

3. FULL-TIME employees work on a regular basis for at least 40 hours per week. Full-time employees may or may not be EXEMPT. They are eligible for all benefits available through work at SVCE, so long as they meet the applicable requirements, such as length of service.

4. PART-TIME employees work on a regular basis for fewer than 40 hours per week. Part-time employees are entitled to certain benefits listed in this employee handbook and those required by applicable state & federal laws.

5. TEMPORARY EMPLOYEES are hired with the understanding that their employment will not continue beyond a stated date or beyond completion of a specified project or projects. Temporary employees will generally not be employed for more than 6 months. Temporary employees are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the CEO.
6. INTERNS are employees who are students and gaining supervised practical experience in a professional field. Interns are paid and are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the CEO.

**Job Posting**

You will be notified of open positions through job postings. The job posting will include the position title, department and a brief description of qualifications. You must discuss your interest in a job opening first with your supervisor. In no event will a promotion or transfer be considered without the supervisor’s knowledge. You are also encouraged to refer qualified candidates for open positions.

**Rehired/Converted Employees**

If you are eligible for rehire at the time of your separation from SVCE, you will be considered for rehire at any time there is a position available for which you are qualified. Former employees will be considered along with all other applicants and have no greater chance of being selected for employment than all other applicants.

If you are rehired by SVCE or convert from part-time to full-time status, your length of service with SVCE for all purposes will be calculated beginning with the rehiring date or the date of conversion to full-time status.

Employees who are terminated due to misconduct or violation of agency policy will be considered ineligible for rehire.

**Job Duties**

Your supervisor will explain your job responsibilities and the performance standards expected of you. Please be aware that your job responsibilities may change at any time during your employment. From time to time, you may be asked to work on special projects or to assist with other work necessary or important to the operation of the agency. Your cooperation and assistance in performing such additional work is expected.

We also may, at any time, with or without notice, alter or change your job responsibilities, reassign or transfer your position, or assign you additional job responsibilities depending on our changing business needs.
Work Schedules

SVCE’s normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Your supervisor will assign your individual work schedule, and you are expected to be ready to perform your work at the start of your scheduled shift.

From time to time, work schedules may fluctuate with customer demand. If a change in your work schedule is required, your supervisor will notify you at the earliest opportunity. You may be required to work overtime or hours other than those normally scheduled, although we expect this to be kept to an absolute minimum. Exempt employees are required to work as many hours as are necessary to complete the responsibilities of the positions they have assumed.

Personnel Records

A personnel file will be maintained in the office of the Director of Finance and Administration on each employee of the agency. General personnel records may be kept in your file such as: job application, performance evaluations, training records, and emergency contact information and payroll changes. You may review your personnel file during regular business hours upon making a request to the Director of Finance and Administration. No one other than you, your supervisor, the Director of Finance and Administration, the CEO, or his designee may seek information from your file without your written permission, except in limited circumstances required by law. Under no circumstances shall your file be removed from the office.

The agency will keep your personnel records private. However, there are certain times when information may be given to a person outside the agency. These are:

1. In response to a subpoena, court order, or order of an administrative agency;
2. To a governmental agency as part of an investigation by that agency of the agency’s compliance with applicable law;
3. In a lawsuit, administrative proceeding, grievance, or arbitration in which you and the agency are parties;
4. In a workers’ compensation proceeding;
5. To administer employee health benefit plans;
6. To a health care provider, when necessary;
7. To first aid or safety personnel, when necessary; and
8. To a prospective employer or other person requesting a verification of your employment.
9. To fulfill other public agency disclosure requirements dictated by law.
Keeping your personnel file up-to-date can be important to you with regard to pay, deductions, benefits and other matters. Coverage or benefits that you and your family may receive under SVCE’s benefits package could be negatively affected if the information in your personnel file is incorrect. Please promptly notify the Director of Finance and Administration of any changes in your personal data.

**Inspection of Payroll Records**

Employees and former employees have the right to inspect and obtain copies of their own payroll records. All requests must be submitted in writing to the Director of Finance and Administration or his/her designee who will make certain that they are properly processed. Requests will be honored within 30 days from the date they are received. Individuals who make a request may be asked to provide identification so that they are not provided access to information on other employees. Individuals who request a copy of their records may be required to pay for the cost of making the copies.

**Layoffs and Work Reductions**

In the event of a layoff or work reduction, once it is determined what the scope of the reduction will be (i.e., agency-wide, job classification, position), employees will be selected for layoff based on a combination of factors, including, but not necessarily limited to: past performance and productivity, qualifications, attendance, ability and willingness to work the required days and hours, and the ability to work cooperatively with others in the affected work unit.

The weight given to the above factors may vary depending on the particular needs of the affected work unit and the agency as a whole at the time of the layoff.

Seniority shall be considered only when, in our opinion, all other factors are equal between two or more employees in the affected work unit. Seniority will be computed on the basis of an employee’s total continuous service with the agency. For this purpose, continuous service before and after any break in service of less than 30 days or an approved leave of absence, will be counted.

**Employment Termination**

SVCE strives to ensure a smooth transition for employees leaving the agency.

SVCE and its employees have an employment relationship that is known as “employment at will.” This means that employees are not required to work for the agency for any set period of time nor is the agency required to employ individuals for any specific length of time. **The statements made in this policy do not alter, modify or limit the employment at will relationship.** An “at-will” employee is subject to termination of employment at any time the agency concludes it appropriate to do so.
Involuntary separation from service means that the termination action is being initiated by SVCE, rather than by the employee. In general, employees who are discharged by SVCE are not eligible for rehire. However, employees who are terminated due to layoff or restructuring may be eligible for rehire or recall at the agency’s discretion.

The agency will consider you to have voluntarily terminated your employment if you do any of the following:

1. Resign from SVCE;
2. Fail to return from an approved leave of absence on the date specified by SVCE, or;
3. Fail to report to work or call in for 3 consecutive work days in accordance with our policies.

In the event that you resign voluntarily, you will be asked to provide us with the professional courtesy of two weeks notice to allow for a smooth transition and training of any replacement personnel. The notice you give will be noted on the employment record and will be considered in any discussion regarding rehire or reference information. Once notice has been given, accrued and unused PTO days normally may not be taken.

All agency property such as office equipment, credit cards, keys, manuals, computer equipment, and cell phones must be returned on or prior to the last day of employment. You must return these items to your immediate supervisor.

Final wages for time worked, plus any pay for unused but accrued PTO, will normally be paid on your last day of employment.

**Exit Interviews**

Should you resign voluntarily, the Director of Finance and Administration or your direct supervisor may conduct an exit interview whenever feasible. This interview allows you to communicate your views on your work with SVCE and the job requirements, operations and training needs and future reference information to potential employers.

**Employment Verification and References**

SVCE’s policy as to references for employees who have left the agency is to disclose the dates of employment and the title of the last position held. In addition, and in accordance with California State Law AB2770, SVCE will disclose if an employee or past employee is not eligible for rehire due to a determination that the employee had engaged in sexual harassment. You may provide a signed form authorizing the agency to release additional specific reference information to potential employers.
It is our policy that only the Director of Finance and Administration is authorized to respond to requests for employee references and verification of employment from financial institutions, etc. No other supervisor or employee is authorized to provide references for current or former employees.

As an employee of SVCE, do not under any circumstances respond to any requests for information regarding another employee unless it is part of your assigned job responsibilities. If it is not, please forward the information request to your supervisor or the Director of Finance and Administration.
Chapter 3-TIMEKEEPING AND ATTENDANCE

Punctuality and Attendance

You are expected to have regular attendance during all scheduled work hours, report to work on a timely basis, and work through the end of your regularly scheduled workday. Any unexcused tardiness or absence causes problems for your fellow employees, customers, and your supervisor. Lateness is disruptive, costly and not fair to the organization or other employees. Chronic lateness will not be tolerated and will result in discipline, up to and including termination. Regular attendance and punctuality is considered an “essential function” of your job.

If you are unable to report for work on any particular day, you must personally call your supervisor prior to the start of your shift on the day that you are scheduled to work. If you are not able to reach your supervisor, you are expected to advise another management representative of your absence or tardiness and leave a telephone number where you can be reached. Do not have a relative or friend call in to report your absence, unless you are unable to call yourself due to a medical or other emergency. If you call after the start of your shift you will be considered tardy for that day. In all cases of absence or tardiness, you are expected to provide your supervisor with an honest reason or explanation. You also must inform your supervisor of the expected duration of any absence. Absent extenuating circumstances, you must call in each and every day you are scheduled to work and will not report to work.

Repeated absenteeism or tardiness (whether excused or not) will not be tolerated. Continuing patterns of absences, early departures, or tardiness--regardless of the exact number of days—may warrant disciplinary action, up to and including termination of employment. Emergency or extraordinary circumstances concerning an absence or tardiness will be considered and we reserve the right to make an exception to this policy if, at our discretion, an exception is warranted. Repeated car failures, missing the bus, consistently failing to arrange back up childcare or oversleeping do not constitute emergency or extraordinary circumstances. We reserve the right to determine what is considered excessive absenteeism.

If you fail to report for work for three (3) consecutive days without any notification to your supervisor, we will consider that you have abandoned your employment, and have resigned your position. You may be required to provide documentation verifying your absence.
**Timekeeping Requirements for Non-Exempt Staff**

Federal and state law requires SVCE to keep an accurate record of time worked. SVCE uses an online time recording system to record this time worked. Employee time records are official SVCE records and must be accurately maintained. You must input your own time at the start and at the end of each workday, and at the start and end of each lunch period. Under no circumstances should you perform any work that is “off-the-clock” or not recorded on your time sheet. If there are any circumstances that make it difficult for you to record all time worked, you should discuss the situation with your supervisor and/or the Director of Finance and Administration for assistance.

Completing another employee’s time record or intentionally falsifying a time record is a serious violation of this policy and may result in immediate termination of employment. If a time record needs to be corrected, both you and your supervisor must initial the change in the time record to verify its accuracy.

**Meal and Rest Periods for Non-Exempt Staff**

California law requires that each non-exempt employee be given at least a 30-minute lunch break each day, and that this break begins within the first five hours of your workday. Accordingly, taking a duty-free lunch period of at least 30 minutes is mandatory. If you work more than 10 hours, you are entitled to a second, unpaid meal period of at least 30 minutes. Depending on the circumstances, you may be able to waive your second meal period if you took the first one.

You will be provided one 30 minute lunch each day, to be taken approximately in the middle of the workday. However, under special circumstances you may be granted permission by your supervisor to extend your lunch break.

You are allowed one ten-minute rest period for every four hours of work or major portion thereof. While there is no set schedule for breaks, you are able to take restroom breaks and get refreshments as desired.

If, at any time, you are unable to take a lunch break and/or rest period because of workload, please immediately inform your supervisor so that appropriate arrangements can be made.

You are expected to observe your assigned working hours and the time allowed for meal and rest periods.
**Overtime Time Provisions for Non-Exempt Staff**

As necessary, you may be asked to work overtime. For purposes of determining which hours constitute overtime, only actual hours worked in a given workweek will be counted. We will attempt to distribute overtime evenly and accommodate individual schedules. A supervisor must previously authorize all overtime work. If overtime is worked without prior authorization this may be grounds for discipline for not following agency policy and procedure. We provide compensation for all overtime hours worked by non-exempt employees in accordance with federal law as follows:

1. All hours worked in excess of forty (40) hours in one workweek, will be treated as overtime.
2. One and one-half (1 ½) times your regular rate of pay for hours worked in excess of forty (40) for the workweek.

Exempt employees may have to work hours beyond their normal schedules, as work demands require. It does not include an unpaid meal period, make-up time, or hours away from work due to PTO, sickness, holiday, jury duty, or other absences from work. No overtime compensation will be paid to exempt employees.

**Exempt Employee Time Off**

Exempt employees of SVCE are paid a salary, which compensates them for working as many hours as required to complete their job duties. Exempt employees do not receive overtime pay. We realize, however, that in instances of extraordinary additional pressure or increased work hours, it may be appropriate for supervisors to recognize the exempt employee’s efforts by granting the employee extra time off separate from and in addition to the employee’s accrued PTO time. In order to achieve consistency among supervisors and fairness to the exempt employees, supervisors must use the following guidelines when exercising their discretion to grant additional time off:

1. Limit the amount of time off to no more than two days;
2. Require the employee to take the time off in the following week whenever possible and;
3. Do not allow employees to accumulate any granted but unused time off.
Lactation Accommodation

Women who wish to express breast milk while at work have the right to request a lactation accommodation and should request these arrangements from their supervisor or the Director of Finance and Administration. Where such arrangements are made during an employee’s normal rest period, the time will be paid. If special arrangements are made to provide a non-exempt employee extra time beyond or in addition to her normal rest period, the time will be unpaid. Break time under this accommodation will be provided each time an employee has the need to express breast milk.

A private area, shielded from view and free from intrusion, will be provided for lactation accommodation that:

- Is not a bathroom
- Is in close proximity to the employee’s work area
- Contains a place to sit and a surface on which to place a pump and personal items
- Has access to electricity or an alternate device such as an extension cord to provide power or an appropriate charging station.

Employees requesting a lactation accommodation will also be provided access to a sink with running water and a refrigerator or portable cooler suitable for storing milk in close proximity to their workspace.

If any employee feels that they have not been provided the appropriate lactation accommodation, they have the right to file a complaint with the Labor Commissioner.

Payment of Wages

Paydays are every other Friday. There are 26 pay periods in a year. The workday (a 24-hour, consecutive period) begins at 12:01 a.m. and ends at midnight. The workweek begins on Sunday and ends on Saturday.

If a regular payday falls on a weekend or holiday, you will be paid on the first day of work prior to the regularly scheduled payday. If there is an error on your check, please report it immediately to your supervisor.

For your convenience, we offer a direct deposit option.

Advances

We do not permit advances against paychecks or against un-accrued PTO.

Issue Date: December 1, 2016
Revised: November 2020
Proposed Amendment: August 2021
Payroll Deductions, Wage Attachments and Garnishments

SVCE makes certain deductions from every employee’s paycheck. Among these are applicable federal, state, and local income taxes, Medicare taxes and disability insurance contributions. By law, SVCE is also required to honor legal attachments and garnishments of an employee’s wages or salaries. If your wages are attached, we will withhold the specified amount to satisfy the terms of the attachment.

Reporting Time Pay

Reporting time pay will be paid under the following conditions:

1. Reporting time pay is owed when you report to work at your regularly scheduled time, but you are not put to work or are given less than half the usual or scheduled day’s work. In this case, you will be paid for at least half of the hours you were scheduled to work, but never less than two hours pay, and never more than four hours pay.

2. Reporting time pay is also owed if you are required to report to work a second time in any one (1) workday and are given less than two (2) hours work on the second reporting. In this case you will receive at least two (2) hours pay for the second appearance.

These provisions do not apply if on a paid “standby” or “on call” status. In some instances, you may not receive reporting time pay. Reporting time pay does not apply if public utilities fail, such as water, gas, electricity, or sewer and/or when work is interrupted by an “act of God” or other causes not within the agency’s control.

Payment for Hours Worked During Business Travel for Non-Exempt Staff

Whenever possible, non-exempt employees traveling on agency business are expected to do so during normal working hours. In the very rare instance where your travel time constitutes overtime, you will be paid overtime as required by law. Non-exempt employees will be paid for all hours worked, including out of town travel time, at regular and overtime pay rates according to the law. Pay for travel time may be at a rate of pay that is less than the employee’s normal rate of pay.

If you are non-exempt and traveling on business, you will not be paid for time between work assignments; e.g., if you stay the night in a hotel, pay begins when you begin to work, or are in transit. Travel pay is to be scheduled in advance, in writing by your supervisor, with the knowledge of the Director of Finance and Administration.

Non-exempt travel may be approved on an as-needed basis, but only with prior authorization from your supervisor.
Pay for Mandatory Meetings for Non-Exempt Staff

The agency will pay you for your attendance at meetings, lectures and training programs if all the following conditions are met:

1. Attendance is mandatory (i.e. required by the agency).
2. The meeting, course, or lecture is directly related to your job.
3. You are notified of the necessity for such meetings, lectures, or training programs by your supervisor (i.e. pre-approval by management is required)

If you meet the above conditions, you will be compensated at your regular rate of pay. If you are required to travel, then travel pay will be initiated. You will not receive compensation time spent for involuntary attendance in courses that are conducted outside of normal business hours and/or that are not directly related to your current job.
Chapter 4—STANDARDS OF CONDUCT

Professional Business Conduct and Ethics

By accepting employment with us, you have a responsibility to SVCE and to your fellow employees to adhere to certain codes of behavior and conduct. The purpose of these rules is not to restrict or impair your right to free speech, but rather to be certain that you understand what conduct is expected and necessary. When each person is aware that he or she can fully depend upon fellow workers to follow the rules of conduct, then our agency will be a better place for everyone to work.

Generally speaking, we expect you to act in a mature and responsible way at all times. Again, we value honesty in communication and personal responsibility. However, to avoid any possible confusion, some of the more obvious unacceptable activities are noted below. Your avoidance of these activities will be to your benefit as well as to the benefit of SVCE. If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please ask for an explanation.

Occurrences of any of the following violations, because of their seriousness, may result in disciplinary action up to and including immediate suspension or termination:

Unacceptable Activities:

1. Generally, conduct which is disruptive, competitive in nature or damaging to the agency.
2. Falsification of timekeeping records.
3. Dishonesty; falsification or misrepresentation on your application for employment or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by SVCE; alteration of agency records or other agency documents.
4. Working under the influence of alcohol or legal or illegal drugs, including marijuana.
5. Theft or inappropriate removal or possession of agency property or the property of fellow employees; unauthorized use of agency equipment and/or property for personal reasons.
6. Possession, distribution, solicitation, sale, transfer, or use of alcohol or legal or illegal drugs, including marijuana, in the workplace, while on duty, or while operating agency-owned vehicles or equipment.
7. Fighting, threatening, or coercing fellow employees for any purpose.
8. Boisterous or disruptive activity in the workplace.
9. Negligence or any careless action leading to damage of agency-owned or customer-owned property or which endangers the life or safety of another person.

10. Obscene or abusive language toward any supervisor, employee or customer; indifference or rudeness towards a customer or fellow employee; any disorderly/antagonistic conduct on agency premises.

11. Insubordination or other disrespectful conduct; refusing to obey instructions properly issued by your supervisor pertaining to your work; refusal to assist on a special assignment.

12. Violation of security or safety rules or failure to observe safety rules and/or practices; failure to wear required safety equipment; tampering with SVCE equipment or safety equipment.

13. Creating or contributing to unsanitary conditions.

14. Smoking in prohibited areas.

15. Any act of harassment, sexual, racial or other; telling sexist or racist jokes; making racial or ethnic slurs.

16. Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.

17. Excessive absenteeism or any absence without notice; failure to report an absence or late arrival.

18. Unauthorized absence from work station during the workday; sleeping or loitering during working hours.

19. Unauthorized use of telephones, mail system, or other agency-owned equipment.

20. Originating, spreading, and taking part in malicious gossip or rumors about employees of the agency.

21. Unauthorized disclosure of confidential information; giving confidential or proprietary information to competitors or other organizations or to unauthorized SVCE employees; breach of confidentiality of personnel or agency information.

22. Violation of agency rules or policies; any action that is detrimental to SVCE’s efforts to operate successfully.

23. Unsatisfactory or careless work; failure to meet production or quality standards as explained to you by your supervisor.

24. Soliciting during working hours and/or in working areas; selling merchandise or collecting funds of any kind for charities or others without authorization during business hours, or at a time or place that interferes with the work of another employee on agency premises.

25. Conducting a lottery or gambling on agency property.
26. Failure to immediately report any damage or accident involving agency equipment and vehicles.

27. Failure or refusal to comply with the work schedule, including mandatory overtime.

28. Using, removing, or borrowing agency equipment or property without prior authorization.

29. The use of abusive or threatening language or actions toward anyone.

This list is not exhaustive. Rather, we ask that you keep in mind at all times the need to conduct yourself with reasonable and proper regard for the welfare and rights of all our employees and for the best interests of the agency. This statement of prohibited conduct does not alter SVCE's policy of at-will employment. Either you or the agency remains free to terminate the employment relationship at any time, with or without reason or advanced notice.

**Performance Evaluations**

You and your supervisor are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Ongoing discussions with your supervisor about your job duties, performance, and the work environment likely will increase your satisfaction with your work experience and the agency’s satisfaction with you.

We want to provide you with the tools to stay on track and to reach your full potential. To provide you with the necessary feedback about your performance, you may receive periodic performance evaluations. Performance evaluations may be conducted annually with us. The frequency of performance evaluations may vary depending upon length of service, job position, past performance, changes in job duties, or recurring performance problems.

After the review, you will be asked to sign the evaluation report simply to acknowledge that it has been presented to you and discussed with you by your supervisor, and that you are aware of its contents.

Positive performance evaluations do not guarantee increases in salary or promotions. Salary increases and promotions are solely within the discretion of the agency, and depend upon many factors in addition to performance. Wage and salary increases are based on merit alone, not length-of-service or the cost-of-living. Having your compensation reviewed does not necessarily mean that you will be given an increase.

**Problem Resolution**

At some time, you may have a concern or question about your job, your working conditions, or the treatment you are receiving. Your good-faith complaints and questions are of concern to us. We ask that you take your concerns first to your supervisor, following these steps:
1. Bring the situation to the attention of your immediate supervisor who will then investigate and provide a solution or explanation.

2. If the problem remains unresolved, you may present it in writing to the Director of Finance and Administration who will work towards a resolution.

This procedure, which we believe is important for both you and us, cannot result in every problem being resolved to your satisfaction. However, we value your input and you should feel free to raise issues of concern, in good faith, without the fear of retaliation.

**Alcoholic Beverage Consumption**

Due to the high risk and liability involved, the agency will not provide alcoholic beverages at social gatherings to SVCE employees. This policy applies to the following:

1. Birthday parties;
2. Office parties;
3. Office picnics; and
4. Recreational activities (i.e. organized team sports)

**Drug and Alcohol Abuse**

SVCE is concerned about the use of alcohol, illegal drugs, or controlled substances as it affects the workplace. We comply with state and federal drug abuse regulations, including the Drug-Free Workplace Act of 1988. Use of these substances whether on or off the job can adversely affect your work performance, efficiency, and safety and health. The use or possession of these substances on the job constitutes a potential danger to the welfare and safety of other employees and exposes us to the risks of property loss or damage, or injury to other persons.

Furthermore, the use of prescription drugs and/or over-the-counter drugs also may affect your job performance and seriously impair your value to us. Any employee who is using prescription or over-the-counter drugs that may impair your ability to safely perform the job, or affect the safety or well-being of others, must notify a supervisor of such use immediately before starting or resuming work. All precautions necessary to preserve your privacy will be taken. You must adhere to the rules stated in this policy as a condition of employment. Failure to comply with this policy may result in discipline, including termination. The Director of Finance and Administration has been designated to administer this policy, monitor the program and make reports as required by law.
If there is ever a reasonable basis to suspect you of violating the drug and alcohol policy, you will be requested to immediately submit to a drug and/or alcohol test. Suspicion will be based on objective symptoms, such as factors related to your appearance, behavior and speech. Possession of illegal drugs or alcohol is prohibited even if you have not used these substances. To help ensure a safe and healthful working environment, job applicants and employees may be asked to provide body substance samples (such as urine, hair samples, and/or blood) to determine the improper or illegal use of drugs and alcohol.

The following rules and standards of conduct apply to all employees either on agency property, or during the workday (including meals and rest periods). The following are strictly prohibited by the agency:

1. Possession or use of alcohol or illegal drugs, including marijuana, or being under the influence of alcohol or illegal drugs while on agency premises or at any time on duty.
2. Driving an agency vehicle or driving for agency business in a private vehicle while under the influence of alcohol or illegal drugs, including marijuana.
3. Distribution, sale, or purchase of an illegal or controlled substance while on agency premises or at any time on duty.
4. Possession or use of an illegal or controlled substance or being under the influence of an illegal or controlled substance while on agency premises or at any time on duty.
5. Any drug or alcohol statute conviction. You must notify SVCE within 5 days of such conviction.

In the event of a safety or security concern or reasonable suspicion of use and/or an on the job accident, you may be asked to provide body substance samples (such as urine and/or blood) to determine the illicit or illegal use of drugs and alcohol. The agency will test for alcohol, cannabinoids, (THC), Opiates, i.e. codeine and morphine, Cocaine metabolites, Amphetamines, i.e. amphetamine and metamorphines, adulterants low creatine levels and Phencyclidine. The agency assures that any information concerning your drug and/or alcohol use will remain confidential.

If the results of your drug and/or alcohol test are positive, the agency will take disciplinary action which may include suspension or immediate termination. The disciplinary action will be based on the seriousness of the offense and your past performance with the agency. In the event that you test positive, you may request a second test to be performed by a reliable drug testing agency, at your expense.

Violation of the above rules and standards of conduct will not be tolerated. We also may bring the matter to the attention of appropriate law enforcement authorities.

SVCE’s policy on drug and alcohol in no way limits or alters the at-will employment relationship.
**Customer and Public Relations**

The success of SVCE depends upon the quality of the relationships between SVCE, our employees, and our customers, suppliers and the general public. Our customers’ impression of the agency and their interest and willingness to do business with us are formed by how you serve them. In a sense, regardless of your position, you are a SVCE ambassador. The more goodwill you promote, the more our customers will respect and appreciate you and our services.

The opinions and attitudes that customers and donors have toward our agency can be affected for a long period of time by the actions of just one employee. It is sometimes easy to take a customer for granted, but when we do, we run the risk of not only losing that customer, but their associates, friends or family who also may be customers or prospective customers.

Here are several things you can do to help give customers a good impression of SVCE:

1. Customers are to be treated courteously and given proper attention at all times. Never regard a customer’s questions or concerns as an interruption or an annoyance. Customer inquiries, whether in person or by telephone, must be addressed promptly and professionally.

2. Never place a telephone caller on hold for an extended period of time. Direct incoming calls to the appropriate person and make sure that the call is received.

3. Act competently and deal with customers in a courteous and respectful manner. Through your conduct, show your desire to assist the customer in obtaining the help that he or she needs. If you are unable to help a customer, find someone who can.

4. All correspondence and documents must be neatly prepared and error-free. Attention to accuracy and detail in all paperwork demonstrates your commitment to those with whom we do business.

5. Never argue with a customer. If a problem develops or if a customer remains dissatisfied, ask your supervisor to intervene.

6. Communicate pleasantly and respectfully with other employees at all times.

These are the building blocks for your and SVCE’s continued success. Thank you for adding your support.
Confidentiality

You are responsible for safeguarding confidential information obtained during your employment with us. Additionally, our customers, employees and vendors entrust SVCE with important information relating to their businesses or personal information. The nature of this relationship requires maintenance of confidentiality. In safeguarding the information we receive, SVCE earns the respect and further trust of our customers, and vendors.

It is your responsibility to in no way reveal or divulge any such information unless it is necessary for you to do so in the performance of your duties. Such confidential information includes, but is not limited to, the following examples:

- customer lists and customer history
- pending projects and proposals
- marketing strategies
- compensation data
- budget information
- periodic business reports and summaries
- bid proposals/contract negotiations
- statistical data
- research and development programs
- mergers/dissolutions
- employee data
- financial information
- pricing information
- passwords
- business plans

Access to confidential information must be on a "need-to-know" basis and supervisor authorization is required.

Upon accepting employment with SVCE, you may have been asked to sign a Confidentiality Agreement, which generally provides that you will not disclose or use any of the agency’s confidential information, either during or after your employment with us. We sincerely hope that our relationship will be long-term and mutually rewarding. However, your employment with SVCE carries with it an obligation to maintain confidentiality, even after you leave our employ.

If you are questioned by someone outside the agency or your department and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to your supervisor.

Issue Date: December 1, 2016
Revised: November 2020
Proposed Amendment: August 2021
It is also important to remember that you may not disclose or use proprietary or confidential information except as your job requires. You may not keep or retain any originals or copies of reports, notes, proposals, customer lists or other confidential and proprietary documents, equipment, supplies, or property belonging to the agency. Any and all copies or originals of reports, notes, proposals, customer lists or other confidential and proprietary documents must be turned over to the agency within twenty-four (24) hours of termination of employment.

You are not permitted to remove or make copies of any SVCE records, reports or documents without prior management approval. Do not post confidential or proprietary information about SVCE, customers, employees, or affiliates on any social media. Disclosure of confidential information could lead to termination of employment, as well as other possible legal action.

For further information, refer to the Customer Confidentiality Policy.

**Whistleblower Policy**

A whistleblower as defined by this policy is an employee of SVCE who reports an activity that he/she considers to be illegal or dishonest to one or more of the parties specified in this Policy. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.

Examples of illegal or dishonest activities are violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting.

If an employee has knowledge of or a concern of illegal or dishonest fraudulent activity, the employee is to contact his/her immediate supervisor or the Director of Finance and Administration. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

Whistleblower protections are provided in two important areas -- confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. SVCE will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. For health facilities, this includes discriminating or retaliating against a patient or employee because that person presented a grievance or complaint, or participated in an investigation or administrative proceeding related to the facility’s care, services or condition. Whistleblower employment protections also extend to cover a county’s “patients’ rights advocates” who provide patient services at county mental health centers. Any whistleblower who believes he/she is being retaliated against must contact the Director of Finance.
and Administration immediately. In addition, employees of health facilities have the right to discuss possible regulatory violations or patient safety concerns directly with the California Department of Public Health’s (CDPH) inspector privately during a CDPH investigation. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

All reports of illegal and dishonest activities will be promptly submitted to the Director of Finance and Administration who is responsible for investigating and coordinating corrective action, or to the Owner if the allegations involve the Director of Finance and Administration.

Employees with any questions regarding this policy should contact the Director of Finance and Administration.

**Conflict of Interest**

As an employee of SVCE, you must avoid actual or potential conflicts of interest with the agency. This policy provides examples of prohibited conflicts of interest. If you are found to have a conflict of interest with the agency, you may be subject to discipline, including termination. You should contact your supervisor with any questions about this policy. Prohibited activities include, but are not limited to:

1. Being an owner, employee, consultant or vendor to any business that competes, directly or indirectly, with the agency.
2. Having a direct or indirect financial relationship with a competitor, customers, or supplier; however, no conflict will exist in the case of ownership of less than 1 percent of a publicly traded corporation.
3. Engaging in any other employment or personal activity during work hours, or using the agency’s name, logo, equipment or property, including stationery, office supplies, computers, telephones, fax machines, postage, and office machines, for personal purposes.
4. Soliciting agency employees, suppliers, or customers to purchase goods or services of any kind for non-agency purposes, or to make contributions to any organizations or in support of any causes.
5. Soliciting or entering into any business or financial transaction with another employee whom the soliciting employee supervises, either directly or indirectly, such as hiring the employee to perform personal services or soliciting the employee to enter into an investment.
**Solicitation**

You are not permitted to solicit or distribute literature during working time. Working time includes both your working time and the working time of the employee to whom the solicitation or distribution is directed. Similarly, distribution of written solicitation material in working areas is prohibited at all times. If you wish to distribute fundraising items such as cookies, candy, and coupon books for sale, you may place them without solicitation in your workstation or SVCE break rooms.

**Media Contact**

Only contact people designated by the CEO of the agency may comment on agency policy or on behalf of the agency. If you are contacted by a news organization for a statement from the agency on any matter, please direct all media inquiries to your supervisor.

**Employment of Friends and Relatives**

The employment of friends and relatives in the same area of an organization may cause conflicts of interest and appearances of impropriety. In addition, personal conflicts may impact the working relationship of the parties. Although the agency does not prohibit the hiring of friends and relatives of existing employees, the agency is committed to monitoring situations in which friends or relatives work in the same area. In the event of an actual or potential problem, the agency’s response may include reassignment or termination of one or both individuals involved. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with an employee is similar to that of persons who are related by blood or marriage, or one who is a domestic partner.

The agency desires to avoid misunderstandings, complaints of favoritism, claims of sexual harassment, and employee dissension that may result from personal or social relationships amongst employees. Therefore, the agency asks that if you become romantically involved with another employee that you disclose your relationship to an appropriate supervisor with whom you feel comfortable. This information will be kept as confidential as possible. For purposes of this provision, “romantically involved” will be interpreted broadly. The agency reserves the right to take necessary and appropriate action to resolve any potential conflict of interest arising out of romantic involvement among employees. Depending on the facts of the situation, such action may include reassignment or termination of one or both of the employees involved.
Personal Relationships in the Workplace

The agency is committed to maintaining a professional work environment where their supervisors treat all employees fairly and impartially. Accordingly, supervisors are not allowed to date, or become romantically or intimately involved with, employees who report to them directly or indirectly. Also, spouses and immediate family members are prohibited from working in job positions where they directly report to, or are reported to, by their spouses or family members. Personal relationships very often cause problems in the workplace, such as a lack of objectivity towards the subordinate’s job performance, the perception of favoritism by other employees (whether justified or not), and potential sexual harassment complaints should a couple break up.

For purposes of this policy, “immediate family” includes significant others (such as unmarried couples who live together), domestic partners, step-parent and step-child relationships, in-law relationships, grandparents and cousins (including analogous relationships with the parents and children of an employee’s significant other). This policy covers all family-like relationships, regardless of blood or legal relationships.

Employees who are currently dating one another, or employees who are married or related and report to or supervise each other, may request to be transferred in order to comply with this policy. When possible, the agency will attempt to accommodate such requests. Please understand, however, that the agency reserves the right not to transfer employees based on conflicting business considerations.

Unprofessional behavior in the workplace, such as sexually related conversations, inappropriate touching (i.e., kissing, hugging, massaging, sitting on laps) another employee, and any other behavior of a sexual nature, is prohibited.

If two employees marry or become related, causing actual or potential problems such as those described, only one of the employees will be retained with the agency unless reasonable accommodations can be made to eliminate the actual or potential conflict. The employees will have 30 days to decide which relative will stay with the agency. If this decision is not made in the time allowed the Director of Finance and Administration will make the decision, taking the employment history and job performance of both employees into account. Supervisors who have any questions about the application of this policy to an employee or applicant should contact the Director of Finance and Administration.

Dress Policy

SVCE, as a condition of employment, expects employees neat and clean grooming and attire appropriate to the job assignment.

Managers are responsible for insuring that employees project a professional image and adhere to this policy. The employee’s supervisor or department head is
responsible for establishing a reasonable dress code appropriate to the position. An employee should consult with their supervisor with questions as to what constitutes appropriate appearance. Where necessary, reasonable accommodation may be made to a person with a disability upon request or an exception can be made for someone in a protected class.

If your supervisor feels your attire and/or grooming is out of place, you may be asked to leave your workplace until you are properly attired and/or groomed. Violating dress code standards may subject you to appropriate disciplinary action.
Chapter 5-DAY TO DAY OPERATIONS

Employer and Employee Property

Because even a routine inspection of agency property might result in the discovery of an employee’s personal possessions, you are encouraged not to bring into the workplace any item of personal property which you do not want to reveal to the agency.

In addition, all desks, lockers, offices, work spaces, cabinets, electronic mail (e-mail), telephone systems, office systems, computer systems, any and all electronically issued technology, agency vehicles and other areas or items belonging to the agency are open to the agency and its employees. YOU SHALL HAVE NO EXPECTATION OF PRIVACY IN ANY OF THESE AREAS. Personal items and messages or information that you consider private must not be placed or kept in any of these places or areas belonging to the agency.

Storage areas, work areas, file cabinets, computer systems and software, office telephones, cellular telephones, any and all electronically issued technology, modems, facsimile machines, copy machines, tools, equipment, desks, voice mail, and electronic mail are agency property, and need to be maintained according to agency rules and regulations.

Desks and work areas must be kept clean and are to be used for work-related purposes. Agency property is subject to inspection at any time, with or without prior notice. Prior authorization must be obtained before any agency property may be removed from the premises.

For security reasons, you must not leave personal belongings of value in the workplace. Personal items, lockers and desks are subject to inspection and search, with or without notice, and with or without your prior consent.

Terminated employees must remove any personal items at the time they leave us. Personal items left in the workplace by previous employees are subject to disposal if not claimed at the time of your termination.

Electronic Systems and Privacy

You shall understand that you have NO expectation of privacy in connection with the use of electronic systems, including stored e-mail/voice mail messages or any messages sent electronically. All messages created, sent, received or stored in these systems are and remain the property of SVCE. SVCE reserves the right to retrieve and review any message composed, sent or received via the system. Please note that even when a message is deleted or erased, it is still possible to recreate the message; therefore, the ultimate privacy of messages cannot be ensured to anyone.
To safeguard and protect the proprietary, confidential and business-sensitive information of SVCE, and to ensure that the use of all electronic systems and equipment is consistent with SVCE’s legitimate business interests, authorized representatives of SVCE may monitor the use of such systems from time to time without notice, which may include printing and reading materials, files on the system, list servers, and equipment.

You should be aware that e-mail messages, like SVCE correspondence, and any and all messages sent electronically may be read by other SVCE employees and outsiders under certain circumstances. While it is impossible to list all of the circumstances, some examples are the following: (1) during system maintenance of the e-mail system, (2) when SVCE has business needs to access the employee’s mailbox, (3) when SVCE receives a legal request to disclose e-mail messages, or (4) when SVCE has reason to believe the employee is using e-mail in violation of SVCE policies.

**Information Technology**

SVCE has a set of Information Technology Policies to which every employee must adhere. Upon hire, these policies should be read and understood. A listing of the most recent Board approved policies can be found on the Agency’s website.

**Social Media Guidelines**

The agency understands that various forms of communication occur through social media, such as Facebook, Twitter, LinkedIn, Reddit, Yelp, Instagram, Snapchat, blogs, media sharing and multimedia host sites such as YouTube. It should be remembered that social media sites do not provide a private setting. Employees who communicate information through social media therefore must not expect that such information is private.

Employees must remember that all existing policies apply to information disseminated through social media. These guidelines are intended to help employees understand some of the unintended outcomes of sharing information through social media.

**Application of Policies**

SVCE policies and standards apply to conduct that occurs in the workplace and while employees are outside of work, if the activities have an actual or potential impact on the employee’s performance, the performance of coworkers, or the employer. Employees should therefore understand that they are responsible for certain activities that occur off SVCE premises or on their own time both to SVCE and third parties. Nothing in this policy prevents employees from exercising their broad rights to discuss the terms and conditions of employment with others, to take action to improve their working conditions, or to otherwise exercise their rights to engage in protected concerted activity.

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**Issue Date:** December 1, 2016  
**Revised:** November 2020  
**Proposed Amendment:** August 2021
**General Policies**

The agency’s policies regarding workplace conduct and interpersonal interactions are embodied in a number of policies, including policies that protect the agency’s trade secrets, legal interests and confidential information. The policies also prohibit unlawful harassment and discrimination and require employees to use work time in an appropriate manner.

The principles set forth in the agency’s policies apply equally to social media, even when the policies do not refer specifically to social media. Violations of any policy through social media or networking will be appropriately addressed when brought to management’s attention.

Illustrations of some of the relevant policies and how they may apply to social media are provided below. The following guidelines apply to all employees when they are at work and away from work.

**General Expectations**

- Employees may not post or transmit any material or information that includes confidential, proprietary or trade secret information, or information that is defamatory, obscene, profane, threatening, harassing, abusive, hateful or humiliating to another person or entity. This includes, but is not limited to, comments regarding the agency or its employees or customers. Employees must ask their supervisors and refer to agency policies if they have any questions about what is appropriate to include in communications involving social media.

**Harassment**

- The agency cannot tolerate intimidation, bullying or threats of violence among co-workers and such acts, even if occurring on line outside of work, will result in serious consequences, including termination.

- The agency maintains a strict policy prohibiting unlawful harassment of any kind. Harassment is unlawful if it is based upon any legally protected characteristic. It includes unwelcome verbal, physical, or visual conduct that creates an intimidating, offensive, or hostile work environment or unreasonably interferes with work performance.

**Reputation**

- Employees must act responsibly and remember that defamatory postings can have serious consequences. Do not create fake blogs or false reviews of the agency or its competitors.

**Opinions**

- Do not state or imply that the opinions you express are those of the agency, its management, or other employees.

- Employees should make it clear at all times that their opinions do not represent those of the agency. They should include disclaimers in online
communications advising that they are not speaking officially or unofficially on behalf of the organization.

- Employees may not use the agency’s logo or proprietary graphics to imply that you are speaking on behalf of the agency.

Questions
- Employees who have concerns regarding workplace conduct or inappropriate behavior or comments are encouraged to contact the Director of Finance and Administration for further guidance.

**Additional Guidance and Information**

While the agency’s policies offer very clear direction on some issues, there are other areas where common sense must prevail. When in doubt about posting, employees shall consider the following:

- There is no expectation of privacy when engaging in social media networking activities. You may know everyone in the room when you have a conversation in person. This will not apply with social networking applications. You may not have full control over how your comments are perceived or shared.

- These are public forums. As a practical matter, it may be impossible to delete information that is shared. Comments may be publicly available for years.

- Even when you do not identify your employer by name in the communication or posting, some readers are likely to know where you work. Keep this in mind when you consider posting or transmitting comments that may be work-related. This shall also be considered when creating your profile.

Should there be questionable or negative information about the company that begins to circulate on social media or in media outlets in general, only the Chief Executive Officer is authorized to respond or react to such information.
**Telephone Usage**

You may use agency telephones for local or personal calls within reason. You are not to charge long distance personal telephone calls to the agency. You are expected to limit personal calls so they do not become excessive or disruptive to your work or work area.

**Cell Phone Usage While Driving**

Within California, and many other states, it is illegal to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving.

Additionally, writing, sending, or reading text-based communications on your cell phone while driving is also prohibited under California law. This includes text messaging, instant messaging, and e-mail. You will be responsible for any tickets you receive if you violate this law.

Use of a hands-free cell phone is required if you are required to use a cell phone while driving for agency business. Another option is that you pull over while driving to place or receive calls on your cellular phones. There is a great potential for harm to you and to others if this policy is violated.

**Smart Phone Stipend**

Employees who hold positions that include the need for a smartphone may receive a stipend to compensate for business-related costs incurred when using their individually owned smartphone. Refer to the Director of Finance and Administration for details on eligibility.

**Workplace Monitoring**

Workplace monitoring, both human and electronic, may be conducted by SVCE to ensure quality control, employee safety, security, and customer satisfaction.

Customer sites may also utilize video surveillance of non-private workplace areas. Video monitoring is used to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence.

Because SVCE is sensitive to your legitimate privacy rights, every effort will be made to see that workplace monitoring is done in an ethical and respectful manner.

**Travel Expense Policy**

SVCE will reimburse you for work-related travel expenses such as transportation, overnight accommodations and meals. The total daily maximum reimbursable
amount for meals is $75.00. You must have your supervisor’s approval before incurring travel expenses. All requests for reimbursement must be submitted to the Director of Finance and Administration for approval along with supporting documents or original invoices.

Non-exempt employees will be paid for time spent traveling and attending conference sessions. If you are required to use your personal automobile on work-related business, SVCE will reimburse you for mileage at the current IRS reimbursement rate and for parking expenses. You must submit the appropriate expense form to the Director of Finance and Administration for approval and then forward it for payment once per month. If you use your personal vehicle for work-related travel you are expected to maintain at least the minimum insurance required by law.

For further details on eligible expense, refer to the Travel Expense Policy or direct questions to the Director of Finance and Administration.

**Agency Property and Equipment**

Equipment essential to accomplishing job duties is often expensive and may be difficult to replace. When using agency property, you are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines.

The agency requires that all equipment be in proper working order and is safe to use at all times. If any equipment appears to be damaged, defective, or in need of repair, do not use it until a qualified technician certifies that it is repaired and safe. Never try to fix broken equipment yourself. Please notify your supervisor of any equipment breakdown as soon as it happens. If the breakdown requires emergency repairs, your supervisor will help you deal with the situation as soon as possible. Prompt reporting of damages, defects, and the need for repairs could prevent possible personal injury and deterioration of equipment. Please ask your supervisor if you have any questions about your responsibility for maintenance and care of equipment used on the job.
If you are authorized to operate an agency vehicle to perform your assigned work, or if you operate your own vehicle in performing your job, you must adhere to the following rules:

1. You must be a licensed California driver and must maintain at least the minimum insurance required by law.
2. You must maintain weekly mileage reports.
3. If you are driving your own car, you must provide adequate maintenance to the car such that it does not pose a safety risk to yourself or others.
4. You are responsible for following all the manufacturer’s recommended maintenance schedules to maintain valid warranties, and for following the manufacturer’s recommended oil change schedule.
5. SVCE provides insurance on agency vehicles. However, you will be considered completely responsible for any accidents, fines, moving or parking violations.
6. If involved in an accident do not admit fault, only provide required insurance and personal DMV information.
7. You must keep the agency vehicle clean at all times. You must also wash and vacuum the vehicle as often as necessary. You will be reimbursed for your reasonable expense of keeping the vehicle clean. Please retain any receipts for reimbursement.
8. Persons not authorized or employed by SVCE cannot operate or ride in an agency vehicle.
9. Prior to operation of any agency vehicle, your supervisor will train you on the appropriate steps to take if you are involved in an accident, such as filling out the accident report, getting names and phone numbers of witnesses and so on.

If you are required to drive an agency vehicle or your own vehicle for agency business, you will also be required to show proof of a current, valid driver’s license and current effective auto insurance coverage prior to the first day of employment.

You are responsible for all agency property, materials, or written information issued to you or in your possession. You may be asked to sign an acknowledgment of receipt of agency property issued to you. All agency property must be returned on or before your last day of work. You may be responsible for the replacement cost of agency property not returned.

Agency cars are for agency business only, and only authorized employees may drive agency cars. Employee spouses, children, friends or anyone other than the employee may not operate these vehicles, unless an emergency arises. A violation of these rules, or excessive or avoidable traffic and parking violations may result in disciplinary action, up to and including termination.

Issue Date: December 1, 2016
Revised: November 2020
Proposed Amendment: August 2021
For more details, refer to GAP2 – Vehicle Use Policy.

**Personal Use of Agency Property**

You are not allowed to use agency owned property for personal use. The definition of “agency owned” assets includes, but is not limited to, facilities, computers, and their related equipment, labelers, copy machines, fax machines, postage, any type of supplies including office supplies, tools, vehicles, credit cards, etc. These assets are provided to you for agency related business only.

Please also remember that all desks, lockers, cabinets, computers and vehicles that belong to the agency will be open to all agency employees. Personal items, messages or information that you consider private must not be placed or kept in telephone systems, office systems, agency computer systems, office work spaces, desks, or file cabinets.

The FedEx or UPS agency accounts are not to be used for personal use.

If you are issued an agency credit card you are responsible for the use of that card. Under no circumstances will the agency allow you to sign an agency credit card unless the card being signed is issued in your name. Signing another employee’s credit card will result in liability for the expense and may subject you to immediate termination. If you hold an agency credit card you may only give permission to another employee to make an authorized business purchase or reservation using your card with prior approval from the Director of Finance and Administration of the agency. Any holders of agency credit cards or authorized users who transact a non-business related charge may be subject to immediate termination. Receipts for all credit card transactions must be given to the Director of Finance and Administration along with an explanation of the purchase.

For details involving the use of a Purchasing Card, refer to FP7 – Purchasing Card Policy.
Driving Record and Insurance

As a condition of employment, we require you to maintain an acceptable driving record if you drive for agency business. Any accidents or traffic violations must be reported to a supervisor immediately if they occur during the course of your duties. You will be responsible for any tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle. Failure to report an on-the-job motor vehicle accident, no matter how minor, will lead to disciplinary action, up to and including termination. Additionally, you are required to maintain the level of insurance required by the state of California. A copy of your insurance card must be on file before you will be allowed to drive for agency business. For further details, please refer to the Travel policy or direct questions to the Director of Finance and Administration.

Health and Safety

Safety is everybody's business. Safety is to be given primary importance in every aspect of planning and performing all SVCE activities. We want to protect you against injury and illness, as well as minimize the potential loss of production. To achieve our goal of maintaining a safe workplace, everyone must be conscious of safety at all times. In compliance with California law, and to promote the concept of a safe workplace, we maintain an Injury and Illness Prevention Plan (IIPP). The IIPP is available for your review from the Responsible Safety Officer. The Responsible Safety Officer has responsibility for implementing, administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

You will receive health and safety training as part of the Safety Program. A complete copy of the Safety Program is kept by the Director of Finance and Administration and is available for your review.

Smoking Policies

Smoking, use of e-cigarettes or vapor products is not allowed in any enclosed area of the building, or within 25 feet of any entrance of the building or in any agency vehicle. In fairness to those who do not smoke, smoking is allowed only during breaks and lunch and only in designated areas.

Security

To provide for the safety and security of you, our customers and our facilities, only authorized visitors are allowed in the work areas. To ensure the safety of our guests, we encourage family and friends to check in when visiting you at the workplace.
The following security procedures must always be followed to ensure your safety and the safety of your fellow employees, and to ensure the confidentiality of the agency’s proprietary information. At no time shall unauthorized persons be allowed to roam unescorted through the agency’s office. It is a matter of courtesy to accompany customers and guests to and from the exits and other office to which they may be destined. If strangers are encountered in our office who do not satisfactorily identify themselves or the person with whom they will be meeting, escort them to the front of the office or ask them to leave the building. If they resist, contact your supervisor/building security/911 immediately.

Be aware of persons loitering for no apparent reason in other non-office areas (e.g., in parking areas, walkways, entrances/exits and service areas). Report any suspicious persons or activities to your supervisor/building security/911. Secure your desk at the end of the day or when called away from your work area for an extended length of time and do not leave valuable and/or personal articles in or around your workstation that may be accessible. Please report any lost facility keys to your supervisor immediately.

**Workplace Violence**

SVCE has developed plans and procedures related to the various types of emergencies and disasters we might face. Knowing how to respond to each of the scenarios listed can make the difference when disaster strikes. Plan and procedures to address each of the scenarios are included in the SVCE Emergency Plan document. Every employee should be familiar with these plans and review them on a regular basis. Situations addressed in the Emergency Plan include:

1. Active shooter
2. Shelter in place
3. Bomb threat
4. Crime
5. Earthquake
6. Elevator emergency
7. Facility and Utility problems
8. Fire, smoke and explosions
9. Hazardous materials
10. Medical or mental health emergency
11. Severe weather
12. Suspicious mail or package
13. Workplace violence
14. Evacuation
The Agency maintains a text group for emergency communications. For details on the use of the text group, refer to the full policy description.

Off-Duty Use of Facilities

You are prohibited from being on agency premises, or making use of agency facilities, while not on duty. You are expressly prohibited from using agency facilities, agency property or agency equipment for personal use.

Parking

You are encouraged to use the parking areas designated for our employees. Please keep in mind that the parking spaces adjacent to or in front of our building(s) are for customers and visitors only. Remember to lock your car every day and park within the specified areas.

Courtesy and common sense in parking will help eliminate accidents, personal injuries, and damage to your vehicle and to the vehicles of other employees. If you should damage another car while parking or leaving, immediately report the incident, along with the license numbers of both vehicles and any other pertinent information you may have, to your supervisor. SVCE cannot be and is not responsible for any loss, theft or damage to your vehicle or any of its contents. You will be responsible for any parking tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle.

Electric Vehicle (EV) Charging

SVCE provides charging to employee owned electric vehicles at no cost for up to four (4) hours. The EV charging stations are located in the parking garage. For details on the use of company EV charging stations, refer to GAP3 - Charging Station Policy.

Employee Suggestion Program

We encourage you to bring forward your suggestions and good ideas about how our agency can be made a better place to work and our service to customers enhanced. When you see an opportunity for improvement, please talk it over with your supervisors. Your manager can help you bring your idea to the attention of the people in the agency who will be responsible for possibly implementing it. All suggestions are valued and listened to. When a suggestion of yours has particular merit, we provide special recognition.
Chapter 6-EMPLOYEE BENEFITS

Benefits

SVCE has developed and invested in an employee benefit program to supplement your regular wages. SVCE will continue these benefits as agency revenues permit; however, we reserve the right to change or eliminate any benefit program at any time.

Our benefit program includes health, dental, and vision coverage, life insurance, paid time off, holiday pay and employer contributions for retirement, Health Reimbursement Account (HRA) and Flexible Spending Account (FSA). In addition, there are a number of programs such as private disability Insurance, Unemployment Insurance and Workers’ Compensation that are also available. Eligibility to participate in these programs is determined by your employee classification and length of continued service with the Agency.

Although this employee handbook does not restate all the features of our benefit programs, it provides brief summaries to acquaint you with some of the key features of the programs. Separate plan summaries and plan documents describe the plans in detail and should be consulted for further information. In the case of a conflict between the benefit information set forth in this employee handbook or oral explanations by agency representatives and the terms and conditions of the official plan documents, the provisions of the official plan documents, as interpreted by the plan administrator, shall control. You are encouraged to review all plan documents carefully to familiarize yourself with all of the provisions of the plans.

Paid Time Off (PTO)

Eligibility

Paid Time Off (PTO) is an all-purpose time-off policy for eligible employees to use for vacation, illness or injury, personal business, the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, In-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status). Personal business also includes time spent for jury duty and bereavement. Regular full-time employees are eligible to earn and use PTO as described in this policy.

PTO begins accruing upon your date of hire. Employees may begin using PTO upon your 90th day of employment. At that time, you can request the use of earned PTO including that accrued during the waiting period. On your 90th day of employment you will be eligible for our Paid Time Off Schedule.
Accrual

Regular, full-time employees accrue 6.15 hours of PTO per pay period for your first year of eligibility. After your first anniversary, and thereafter, you will receive an additional eight (8) hours per year, which will accrue at an additional rate of .31 hours per pay period, not to exceed ten (10) years of employment. While not encouraged, employees are allowed to run a negative balance of no more than 40 hours of time. After this negative balance is reached, no more time off will be approved.

The length of eligible service is calculated on the basis of a "benefit year." This is the 12-month period that begins when you start to earn PTO. You will not earn PTO while you are out on a leave of absence. Therefore, your benefit year may be extended if you go out on a leave of absence other than a military leave of absence. Military leave has no effect on this calculation. (See individual leave of absence policies for more information.)

Scheduling PTO

PTO can be used in minimum increments of one (1) hour for non-exempt employees. Exempt employees may use PTO in ½ day or 1 full day increments. If you have an unexpected need to be absent from work you must notify your direct supervisor before the scheduled start of your workday, if possible. Your direct supervisor must also be contacted on each additional day of unexpected absence.

To schedule planned PTO, you need to request advance approval from your supervisor. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

PTO is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

PTO will be used to supplement any payments that you are eligible to receive from disability insurance, or workers' compensation. The combination of any such disability payments and PTO cannot exceed your normal weekly earnings.

PTO Caps

In the event that available PTO is not used by the end of the benefit year, you may carry unused time forward to the next benefit year. The amount of PTO carried may not exceed twice your annual accrual. Once this maximum is reached, PTO will stop accruing until PTO is taken.

Upon termination of employment, you will be paid for unused PTO that has been earned through your last day of work.
**Sick Leave**

Sick leave is a form of insurance that is accumulated in order to provide a cushion for incapacitation due to illness. It is to be used only for the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, In-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status).

For employees who are not eligible for the PTO policy as outlined above, employees will be granted 24 hours of sick leave upon hire and on January 1st of each year thereafter. Employees may begin using sick leave upon their 90th day of employment. Employees may not carry unused sick leave forward to the next year.

When wishing to use sick leave, you must personally call your supervisor prior to the start of your shift on the day you are scheduled to work. Sick leave is not to be taken in less than two (2) hour increments and does not accrue when you are out on sick leave.

A paid absence is counted as hours worked for the purposes of computing a 40-hour week, but is not counted as a basis for computing overtime.

You will not receive sick pay for any days for which you received Workers’ Compensation payments.

If you become a full time employee, you will be eligible to begin accruing PTO based on your full time convergence. You will no longer be eligible for sick leave.

Sick leave is not granted for the purpose of accompanying or taking pets to procure medical attention.

Accrued sick leave does not carry over from year to year. We do not provide pay in lieu of unused sick leave. Additionally, unused sick leave has no cash value and will not be paid at termination.

**Holidays**

We observe the following paid holidays for full-time employees:

- **Martin Luther King Jr.’s Birthday**
- **President’s Day**
- **Memorial Day**
- **Juneteenth**
- **Independence Day**
- **Labor Day**

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Issue Date: December 1, 2016
Revised: November 2020
Proposed Amendment: August 2021
Veterans Day
Thanksgiving
Day after Thanksgiving
The week of Christmas Day through New Year’s Day

Eligibility for holiday pay begins upon date of hire. You must also be regularly scheduled to work on the day on which the holiday is observed, and must work your regularly scheduled working days immediately preceding and immediately following the holiday, unless an absence on either day is approved in advance by your supervisor.

When a holiday falls on a Saturday or Sunday, it is usually observed on the preceding Friday or the following Monday. Holiday observance will be announced in advance. All employees will be eligible for the week off between Christmas & New Year’s Day as a paid week off. Part time and non-exempt employees will be paid based on their regular expected hours of work.

If you are on a paid absence due to PTO when a holiday occurs, you will receive holiday pay. Non-exempt employees who work on holidays, due to customer job requirements, will receive regular earned wages.

Insurance Benefits

Medical, Dental and Vision Insurance: We provide comprehensive medical, dental & vision insurance plans for eligible employees and their dependents. You may be required to provide adequate proof of the dependent relationship to add the dependents to our insurance policies. Typically proof of the relationship may be established through a copy of a birth certificate, adoption documents, marriage license, or certificate of registered domestic partnership. We cannot guarantee your domestic partner relationship will be kept confidential.

Full-time employees are eligible on the first of the month once they have completed 30 days of continuous employment with SVCE. The agency will contribute $1,000 towards full-time employee’s medical, dental and vision benefits. You will be responsible for any excess premiums due for the coverage you choose for your dependents. Deductions from your paycheck will be made to cover this cost through payroll deductions. Information describing your benefits will be given to you when you join the program.

During any leave of absence such as such as a CFRA leave, personal leave, Workers’ Compensation leave or other disability leave, health benefits will continue for a maximum of 12 weeks from the start of the leave. For the duration of any pregnancy disability leave of absence, health and life insurance benefits will be continued for the duration of your pregnancy disability leave.

Please direct any questions you have regarding your health and dental insurance to the Director of Finance and Administration.
Retirement Plan: Eligible employees must participate in the 401(a) employer-sponsored retirement plan that allows percentage-based contributions from the agency and the employee. Currently, the percentage-based contribution of gross wages is 10% that is equally matched by SVCE. Contributions begin on your first paycheck and you are immediately 100% vested. SVCE also offers a 457(b)-retirement plan that allows percentage-based contributions from the employee only. Participation is voluntary, and contributions can be changed at any time. For more information regarding eligibility, contributions, benefits and tax status, contact the Director of Finance and Administration. All eligible participants will receive a summary plan description.

Health Reimbursement Account (HRA): SVCE contributes $500/month to a full-time employee’s HRA. Only the employer contributes to the HRA and the funds used by the employee for allowable expenses are non-taxable. Eligible expenses include health related products and services, copays and prescriptions. For more information, contact the Director of Finance and Administration.

Disability Insurance: The Agency furnishes private short & long-term disability policies. For more information, contact the Director of Finance and Administration.

Life and Accidental Death and Dismemberment Insurance: If you are a regular full time employee of SVCE, you will be provided our group life insurance coverage paid for by the organization. This insurance is payable in the event of your death, in accordance with the policy, while you are insured. You may change your beneficiary whenever you wish by submitting the appropriate documents to the Director of Finance and Administration. Refer to the literature provided by our insurance agency for details on your life insurance coverage.

Unemployment Compensation: We contribute each year to the California Unemployment Insurance Fund on behalf of our employees.

Workers' Compensation: The agency purchases a workers’ compensation insurance policy to protect you while you are employed by us. The policy covers you in case of occupational injury or illness. It is your responsibility to notify a member of management immediately if injured. Please refer to the Workers’ Compensation policy for additional information.

We provide workers' compensation insurance for our employees as required by state law. The insurance provides important protection for employees who suffer a work-related injury. We encourage you to report all workplace injuries immediately and to take advantage of the benefits provided by our workers' compensation insurance if you are injured on the job.
Workers' compensation insurance provides important protection for employees who suffer an injury at work. Unfortunately, we understand that some employees are encouraged to file fraudulent workers' compensation claims. For your own protection, you should know that the California Insurance Frauds Protection Act provides that it is unlawful for any person to:

"Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining . . . compensation . . . and shall be punished by imprisonment in county jail for one year, or in the state prison for two, three or five years, or by a fine not exceeding Fifty Thousand Dollars ($50,000.00) . . . or by both imprisonment and fine."

Our policy is to investigate all questionable workers' compensation claims. If they appear to be fraudulent, they are referred to the Bureau of Fraudulent Claims and the District Attorney's office.

**Section 125 (Cafeteria Plan):** SVCE contributes $200/month to eligible employees Flexible Spending Account (FSA). Eligible expenses include health related products and services, prescriptions, copays, dependent care, and work-related public transportation and parking.

Through the flexible spending account (FSA), you may designate an annual dollar amount of your before-tax income to pay for certain eligible expenses. The IRS sets a limit on how much can be funded into a FSA and the limit includes contributions from SVCE and you. Particular care should be taken to assure that the funds required in the flexible spending account are not over estimated as unused funds cannot be returned to the participant at the end of the plan year. Please refer to the Flexible Benefit Plan (SPD) booklet for information about the program. If you need additional information or change forms, please speak with the Director of Finance and Administration.

**Domestic Partners**

SVCE believes that basic medical/dental/vision coverage should be available to employees and their dependents. To recognize non-traditional family arrangements and to demonstrate our commitment to our community of employees and their families, SVCE has instituted a Domestic Partners Policy. This policy gives you the opportunity to cover your domestic partner on our benefits plans. Under California law, any two adults over the age of 18 can enter into a domestic partnership. SVCE wishes to make it clear that it cannot guarantee confidentiality of the relationship once a domestic partner is covered under our policy. See the Director of Finance and Administration for more information.
Benefits Continuation / COBRA

The federal Consolidated Omnibus Budget Reconciliation Act ("COBRA") gives qualified employees and their dependents the opportunity to continue health insurance coverage under SVCE’s health plan when a “qualifying event” would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee’s hours or a leave of absence; an employee’s divorce or legal separation; and a dependent child no longer meeting eligibility requirements. Under COBRA, you or the beneficiary pays the full cost of coverage at SVCE’s group rates. In addition, you or the beneficiary may be required to pay an administration fee. Our plan administrator will provide you with a written notice describing rights granted under COBRA when you become eligible for coverage under our plan. The notice contains important information about your rights and obligations.

Recreational Activities and Programs

SVCE or its insurer will not be liable for payment of workers’ compensation benefits for any injury that arises out of your voluntary participation in any off-duty recreational, social, or athletic activity that is not part of your work related duties.

Leaves of Absence

Occasionally, for medical, personal, or other reasons, you may need to be temporarily released from the duties of your job with SVCE. It is the policy of SVCE to allow its eligible employees to apply for and be considered for certain specific leaves of absence.

All requests for leaves of absence shall be submitted in writing to your supervisor. Each request shall provide sufficient detail such as the reason for the leave, the expected duration of the leave, and the relationship of family members, if applicable. When you become aware of your need for leave, requests shall be provided at least 30 days in advance. If your need for leave is not foreseeable, you must follow the agency’s customary notice and procedural requirements for requesting leave. Failure to return to work as scheduled from an approved leave of absence or to inform your supervisor of an acceptable reason for not returning as scheduled will be considered a voluntary resignation of employment. While on a leave of absence you may not obtain other employment or apply for unemployment insurance. If either of these instances occurs, you may be viewed as having voluntarily resigned from the agency.

You will not accrue PTO while you are on a leave of absence, regardless of whether it is paid or unpaid. There are several types of leaves for which you may be eligible.

Medical Leaves of Absence

A medical leave of absence may be granted for non-work related temporary medical disabilities for up to 30 days with a doctor’s written certificate of disability.
Requests for leave must be made in writing as far in advance as possible, but, requests shall be provided at least 30 days in advance. If your need for leave is not foreseeable, you must follow the agency’s customary notice and procedural requirements for requesting leave. If you are granted a medical leave you will be paid at 50% of your normal wages and are required to use any accrued sick pay or PTO previously accrued.

A medical leave begins on the first day your doctor certifies that you are unable to work and ends when your doctor certifies that you are able to return to work, when the employer is unable to accommodate additional leave or until the end of the month in which the leave began, whichever occurs first. Your supervisor will supply you with a form for your doctor to complete, showing the date you were disabled and the estimated date you will be able to return to work. You must present a doctor’s certificate showing fitness to return to work.

For the duration of any leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for a maximum period of 12 weeks from the start of the leave. For the duration of a pregnancy disability leave, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

Beyond this coverage period, if you wish to continue these benefits you may do so by electing to continue the benefit through the COBRA provisions, and by paying the applicable premiums.

You will not accrue PTO while you are on a medical leave of absence.

If returning from a non-work related medical leave, you will be offered the same position held at the time of leaving, if available. However, unless you are on a CFRA or pregnancy disability leave, we cannot guarantee that your job or a similar job will be available upon your return. If SVCE is unable to provide a job for you at the end of your leave, we will end your employment, but you will be eligible to apply for any opening that may arise for which you are qualified.
**Alcohol and Drug Rehabilitation Leave**

SVCE provides an unpaid leave to assist employees who recognize that they have a problem with alcohol or drugs that may interfere with their ability to safely and competently perform their job. If you have a problem with alcohol and/or drugs and decide to enroll voluntarily in a rehabilitation program you will be given unpaid time off. You are eligible to request this leave after 90 days of continuous employment.

During the leave, all available PTO will run concurrently with the leave. You will not accrue PTO during this leave.

For the duration of any Alcohol and Drug Rehabilitation leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for a maximum period of 12 weeks from the start of the leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

Beyond this coverage period, if you wish to continue these benefits you may do so by electing to continue the benefit through the COBRA provisions, and by paying the applicable premiums.

**Bereavement Leave**

SVCE provides regular full-time and regular part-time employees up to three (3) days’ paid bereavement leave in the event of a death in your immediate family. For purposes of this policy, “immediate family” includes your spouse, parent, child, sibling; your spouse’s parent, child, or sibling; your long-time companion or domestic partner; and your grandparents or grandchildren. If you need to take time off due to the death of an immediate family member you must contact your supervisor. Your supervisor may approve additional unpaid time off.

**Bone Marrow and Organ Donation Leave**

Employees who have been employed for at least 90 days and who are donating an organ to another person may take a paid leave of absence not exceeding 30 business days (and which may be taken in one or more periods) in any one-year. Employees who are donating their bone marrow to another person may take a paid leave of absence not exceeding 5 business days (and which may be taken in one or more periods) in any one year. An additional unpaid leave of up to 30 business days in a 12-month period may be granted to an employee donating an organ.

Requests for leave must be made in writing as far in advance as possible. You must provide a written medical certification from your health care provider to SVCE that shows that you are a bone marrow or organ donor and that there is a medical necessity for the donation.
Bone Marrow and Organ Donation leave is a paid leave, however you are required to use up to 5 days of accrued but unused sick or PTO leave for bone marrow donation, and up to 2 weeks of accrued but unused sick or PTO leave for organ donation.

For the duration of a Bone Marrow or Organ Donation leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for a maximum period of 12 weeks from the start of the leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

When you are ready to return to work after a Bone Marrow or Organ Donation leave, you must provide certification from your medical care provider that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. Except as otherwise allowed by law, you are entitled, upon return from leave, to be reinstated in the position you held before the Bone Marrow or Organ Donation leave, or to be placed in a comparable position with comparable benefits, pay, and terms and conditions of employment.

**CFRA (California Family Rights Act)**

**Eligibility and Terms of the Leave**

If you have worked at least 12 months and for at least 1250 hours in the previous 12 months and work at a worksite where the employer employs 5 or more employees, you will be eligible to take a family care and medical leave of absence under the California Family Rights Act of up to 12 workweeks in a 12-month period. SVCE uses the Rolling Year for calculation of CFRA. This “rolling” 12-month period begins on the date your CFRA leave begins, and ends 12 months after that date. Each time an employee takes family leave, the remaining leave entitlement is any balance of the 12 workweeks not used during the immediately preceding 12 months.

If eligible, you may take a CFRA leave for any one of the following reasons:

1. The birth of a child, in order to care for the child;
2. The placement of a child with you for adoption or foster care;
3. To care for your child, parent, domestic partner, spouse, grandparent, grandchild or sibling who has a serious health condition;
4. To care for your own serious health condition (except a serious health condition for pregnancy, childbirth or related medical condition).
5. Reasons related to deployment or military activities of employee's spouse, domestic partner, child or parent who is a member of the Armed Forces.
If the CFRA leave is needed for a foreseeable planned medical procedure, SVCE will work with you to schedule the procedure so as not to unduly disrupt SVCE operations, subject to the approval of the medical care provider. Leave to care for a newborn or a newly placed child must be concluded within one year of the birth or placement of the child. Where both parents are employed by SVCE, the two parents are entitled to each take the leave up to a total of 12 workweeks in order to care for the newborn child or newly placed child.

**Applying for Leave**
If possible, you should give at least thirty (30) days’ notice before beginning a CFRA leave. This notice must include a written certification from a medical care provider which includes the following information:

1. The date on which the serious health condition began;
2. The probable duration of the condition;
3. The leave if it is for the care of your child, parent, domestic partner, spouse, grandparent, grandchild or sibling, the estimated amount of time the medical care provider believes you need in order to care for them and a statement that the serious health condition warrants the participation of a family member.
4. If the leave is for you, a statement by your medical care provider that you are unable to perform one or more of the essential functions of the job, due to your serious health condition.

**Return to Work**
When you are ready to return to work after a CFRA leave, you must provide certification from your medical care provider that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. Except as otherwise allowed by law, you are entitled, upon return from leave, to be reinstated in the position you held before the CFRA leave, or to be placed in a comparable position with comparable benefits, pay, and terms and conditions of employment.

**Integration with Other Benefits**
CFRA leave is unpaid. You are required to use accrued PTO for all CFRA leaves. You are required to use accrued sick leave or PTO for CFRA leaves for your own condition. You may elect to use up to half of the sick leave or PTO you accrue on an annual basis for CFRA leaves for illnesses of your child, parent, domestic partner, spouse, grandparent, grandchild or sibling. Sick leave pay and PTO will supplement any State Disability or Paid Family Leave benefits. SVCE will maintain the group medical benefits during a CFRA leave as may be required by law. However, SVCE may recover any premium it has paid for maintaining group medical care coverage during any unpaid part of the CFRA leave if you fail to return from the leave, provided that the failure to return is for a reason other than the continuation, recurrence, or onset of a serious health condition, or other circumstances beyond your control. You will not accrue sick leave or PTO, nor be paid for holidays, during CFRA leave. You should make a “reasonable effort” to schedule such leave so as not to disrupt unduly SVCE’s operations.
**Relationship with Pregnancy Disability Leave**

Leave because of the employee’s disability for pregnancy, childbirth or related medical condition is not counted as time used under CFRA. Once the pregnant employee is no longer disabled, or once the employee has exhausted PDL and has given birth she may apply for leave under the CFRA, for purposes of baby bonding.

Any leave taken for the birth, adoption, or foster care placement of a child does not have to be taken in one continuous period of time. CFRA leave taken for the birth or placement of a child will be granted in minimum amounts of two weeks. However, the company will grant a request for a CFRA (for birth/placement of a child) of less than two weeks’ duration on any two occasions. Any leave taken must be concluded within one year of the birth or placement of the child with the employee.

For the duration of your CFRA leave, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for a maximum period of 12 weeks from the start of the leave. This obligation begins on the date leave first begins under CFRA. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

Beyond this coverage period, if you wish to continue these benefits you may do so by electing to continue the benefit through the COBRA provisions, and by paying the applicable premiums.

**Civil Air Patrol Leave**

Employees who volunteer for the California Wing of the Civil Air Patrol are allowed up to ten days of unpaid leave each year. This leave covers employees who are needed to respond to an emergency operational mission who have been employed by the agency for at least 90 days immediately preceding the requested leave. The agency reserves the right to verify the need for the leave with the Air Patrol.

**Jury Duty or Witness Leave**

You may want to fulfill your civic responsibilities by serving on a jury or as a witness as required by law. You may request unpaid leave for the length of absence, unless the leave of absence is taken as PTO. We will comply with federal and state requirements on pay for exempt employees. You may be requested to provide written verification from the court clerk of having served.
You must show the jury duty or witness summons to your supervisor as soon as possible so that arrangements can be made to cover your absence. Of course, you are expected to report for work whenever the court schedule permits. If you are called for jury duty during a particularly busy time, we may ask you to request the court to postpone the mandatory jury duty to a more convenient time for us. You retain all fees paid for appearing, plus transportation reimbursements received, if any.

**Management Wellness Leave**

Exempt employees may take up to 40 hours, per calendar year of paid wellness leave. You must submit your request for wellness leave at least 14 days in advance to the Director of Finance and Administration for approval. This leave can be taken all at once or intermittently. Unused leave cannot be carried over to the following year and is not compensable when you leave SVCE.

**Military Leave**

If you wish to serve in the military and take military leave you must contact the Director of Finance and Administration for information about your rights before and after such leave. You are entitled to reinstatement upon completion of military service provided you return or apply for reinstatement within the time allowed by law.

**Military Spouse Leave**

If your spouse is on leave from active military service, you may be eligible for ten days of unpaid leave. Employees who work an average of 20 hours per week and have a spouse who is deployed during a period of military conflict are eligible for this leave. In order to determine whether you are eligible for leave, please contact the Director of Finance and Administration within two days of receiving official notice that your spouse will be on leave from deployment. You must submit written documentation certifying that you spouse will be on leave from deployment during the time the leave is requested.

**Personal Leave**

Occasionally, for personal reasons, you may need to be temporarily released from the duties of your job with SVCE. It is the policy of SVCE to allow its eligible employees to apply for and be considered for an unpaid, personal leave of absence.
All requests for leaves of absence shall be submitted in writing to your supervisor. Each request shall provide sufficient detail such as the reason for the leave, the expected duration of the leave, and the relationship of family members, if applicable. When you become aware of your need for leave, requests should be provided at least 30 days in advance. If your need for leave is not foreseeable, you should follow the company’s customary notice and procedural requirements for requesting leave. Failure to return to work as scheduled from an approved leave of absence or to inform your supervisor of an acceptable reason for not returning as scheduled will be considered a voluntary resignation of employment. While on a leave of absence you may not obtain other employment or apply for unemployment insurance. If either of these instances occurs, you may be viewed as having voluntarily resigned from the company.

You may elect to use any accrued PTO or sick leave time, however you will not accrue PTO or sick time while you are on a leave of absence.

For the duration of your personal leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for the duration of your leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected. If you wish to continue these benefits you may do so by electing to continue the benefit through the COBRA provisions, and by paying the applicable premiums.

If SVCE cannot reinstate you to the position you held before your leave began, SVCE may offer you a comparable position, provided that a comparable position exists and is available, and provided that filling the available position would not substantially undermine SVCE’s ability to operate safely and efficiently.

**Pregnancy Disability Leave**

**Eligibility and Terms of Leave**

Female employees are entitled to an unpaid Pregnancy Disability Leave (PDL) during the time they are disabled due to pregnancy, childbirth, or related medical conditions. This leave will be for the period of disability, up to four months or 17 1/3 workweeks. You are “disabled by pregnancy” if you are unable because of pregnancy to work at all, are unable to perform the essential functions of your job, or to perform these functions without undue risk to successful completion of your pregnancy, or to other persons.

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by your medical care provider. Medical certification is required, and the length of Pregnancy Disability Leave will depend on the medical necessity for the leave. If you need intermittent leave or leave on a reduced schedule, SVCE may require you to transfer, during the period of the intermittent or reduced schedule leave, to an available alternative position for which you are qualified and which better accommodates your recurring periods of leave.
to an alternative position may include altering an existing job to better accommodate your need for intermittent leave or a reduced work schedule.

**Applying For Leave**

If possible, you shall give at least 30 days notice requesting a pregnancy-related leave. This notice must provide and include the expected date on which the leave will begin, written certification from your medical care provider stating the anticipated delivery date and the duration of the leave.

**Return to Work**

Before returning to work, you must provide a release from your medical care provider certifying that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. SVCE will reinstate you to your position unless:

1. Your job has ceased to exist for legitimate business reasons;
2. Your job could not be kept open or filled by a temporary employee without substantially undermining SVCE’s ability to operate safely and efficiently;
3. You have directly or indirectly indicated your intention not to return;
4. You are no longer able to perform the essential functions of the job with or without reasonable accommodation;
5. You have exceeded the length of the approved leave; or
6. You are no longer qualified for the job.

If SVCE cannot reinstate you to the position you held before the pregnancy disability leave began, SVCE will offer you a comparable position, provided that a comparable position exists and is available, and provided that filling the available position would not substantially undermine SVCE’s ability to operate safely and efficiently.

**Integration with Other Benefits**

A pregnancy disability leave is unpaid, but you are required to use your accrued sick leave during the leave. In addition, you may elect to use accrued PTO during the leave. Sick leave and PTO will supplement any Disability Insurance benefits. SVCE will maintain group medical benefits during a pregnancy disability leave as required by law. No additional PTO, sick leave or holiday pay will accrue during the leave. You may also, however, be eligible for short term disability benefits.

**Continuation of Medical Benefits**

For the duration of your PDL leave of absence, health and life insurance benefits ordinarily provided by SVCE, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you
would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected. Beyond this coverage period, if you wish to continue these benefits you may do so by electing to continue the benefit through the COBRA provisions, and by paying the applicable premiums.

School Activities and Day Care Leave

The company will allow employees who work at a location with 25 or more employees, time off to participate in school activities. An employee who is the parent, guardian, step-parent or foster parent of a child enrolled in a licensed child day care facility or in kindergarten through grade 12 may take up to 40 hours of unpaid time off per year (limited to 8 hours per month) to visit the child’s facility or school, find or enroll the child in school or day care and cover child care emergencies. You must use PTO for the visits, and may be asked to provide documentation from the facility or school verifying the date and time of your visits.

School Appearance Leave

If you are the parent or guardian of a child who has been suspended from school and you receive a notice from your child’s school requesting that you attend a portion of a school day in the child’s classroom, you may take unpaid time to appear at the school, unless you use accrued PTO. Before your planned absence, you must give reasonable notice to your supervisor that you have been requested to appear by your child’s school.

Time off for Victims of Domestic Violence and Sexual Assault

SVCE takes threats and actions of domestic abuse and sexual assault against our employees very seriously, and wants employees to feel free to obtain services to keep themselves and their dependents safe.

If at any time you need to be absent from work because you have been a victim of domestic violence or sexual assault, which caused physical or mental injury, a threat to physical injury or whose immediate family member is deceased as the direct result of a crime, and you need to take time off to ensure your safety, seek medical treatment, or receive counseling as a result of domestic violence or sexual assault, please let your supervisor or the Director of Finance and Administration know immediately. Your privacy will be protected to the greatest extent possible. You may use accrued PTO or sick leave in lieu of unpaid time off for these purposes.

Time Off for Victims of a Violent or Serious Crime

Under certain circumstances, employees who are victims of serious crimes may take time off work to participate in judicial proceedings. Qualified family members of such crime victims may also be eligible to take time off from work to participate in judicial proceedings. The law defines a serious crime to include violent or serious felonies, such as felonies involving theft or embezzlement, crimes involving
vehicular manslaughter while intoxicated, child abuse, physical abuse of an elder or dependent adult, stalking, solicitation for murder, hit-and-run causing death or injury, driving under the influence causing injury, and sexual assault. When possible, you must provide us with advance notice of the need for the time off. Your privacy will be protected to the greatest extent possible. Time away from work for non-exempt employees will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

**Time Off to Vote**

If you do not have sufficient time outside of working hours to vote in a statewide election, you may, without loss of pay, take off up to two hours of working time to vote. Such time must be at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working, unless otherwise mutually agreed. You must notify us at least two working days in advance to arrange a voting time.

**Volunteer Emergency Duty Leave**

SVCE will allow unpaid time off to employees who perform emergency duty as a volunteer firefighter, reserve peace officer, emergency rescue personnel, an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. If you are a volunteer firefighter, or perform other emergency personnel duties, please alert your supervisor so that he or she may be aware of the fact that you may have to take time off for emergency duty. When possible, you must provide us with advance notice of the need for the time off. Time away from work will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

**Volunteer Time Off**

SVCE believes in the importance of giving back to our community. All employees may request up to 40 hours of paid time off each calendar year to volunteer at a 501(c)(3) organization, approved by the Director of Finance and Administration. Requests must be made at least 14 days in advance and the time off does not have to be on consecutive days. Time off must be used in a minimum of 2 hour increments. You may not use more than 2 days per quarter and unused Volunteer Time Off cannot be carried over to the following year.
**Workers’ Compensation**

We, in accordance with state law, provide insurance coverage for employees in case of a work related injury. To ensure that you receive any workers’ compensation benefits to which you may be entitled, you will need to:

1. Immediately report any work-related injury to your supervisor.
2. Seek medical treatment and follow-up care if required.
3. Complete a written Employee’s Claim Form (DWC Form 1) and return it to your supervisor.

Provide us with certification from your health care provider regarding the need for workers’ compensation disability leave and your ability to return to work from the leave.

**Workers’ Compensation and CFRA**

Employees who are ill or injured as a result of a work-related incident, and who are eligible for family medical leave under state law and the California Family Rights Act (CFRA)), will be placed on CFRA during the time they are disabled and not released to return to work. The leave under these laws runs concurrently, and eligible employees will be on CFRA for a maximum of 12 weeks in a 12-month period calendar year.
Receipt and Acknowledgment of SVCE Employee Handbook

I have received my copy of SVCE’s employee handbook. I understand and agree that it is my responsibility to read and familiarize myself with the policies and procedures contained in the handbook.

At-Will Employment
I further understand that my employment is at-will, and neither SVCE nor I have entered into a contract regarding the duration of my employment. I am free to terminate my employment with SVCE at any time, with or without cause. Likewise, the agency has the right to terminate my employment with or without cause, at the discretion of the agency. No employee of SVCE can enter into an employment contract for a specified period of time, or make any agreement contrary to this policy without the written agreement from the CEO and formal approval by the Board.

Future Revisions
We reserve the right to revise, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Drug and Alcohol Abuse Policy
I certify that I have read the agency’s Drug and Alcohol Abuse Policy and agree to abide fully by its terms. I understand that as a condition of my employment, I must notify the agency of any conviction for a drug violation that occurs within five days after such a conviction. I understand that any violation of the policy may result in serious disciplinary action, including immediate termination.

Employee's Printed Name________________________ Position______________

Employee's Signature_________________________ Date______________
Receipt and Acknowledgment of SVCE Handouts

CA Rights of Victims of Domestic Violence, Sexual Assault and Stalking
I acknowledge that I have received the enclosed pamphlet on my rights for job protected time off if I am ever a victim of domestic violence, sexual assault or stalking.

Sexual Harassment Prevention Handout
I acknowledge that I have read and understand the enclosed pamphlet on sexual harassment prevention in the workplace and reporting procedures in the event that harassment occurs.

Workers’ Compensation Handout
I acknowledge that I have received the enclosed pamphlet on workers’ compensation benefits.

Employee's Printed Name_________________________ Position_____________________

Employee's Signature_____________________________ Date_________________________
Staff Report – Item 1i

Item 1i: Authorize the Chief Executive Officer to Execute Amendment to Agreement for FY20-21 with Richards, Watson & Gershon for Legal Services

From: Girish Balachandran, CEO

Prepared by: Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

RECOMMENDATION
Staff recommends that the Board authorize the CEO to execute an amendment to the current agreement for FY20-21 legal services with Richards, Watson & Gershon (RWG) to increase compensation not to exceed a limit of $235,000.

BACKGROUND
Silicon Valley Clean Energy (SVCE) has been utilizing the services of RWG since the Agency’s formation with the current agreement expiring on September 30, 2021. Staff at both SVCE and RWG have been tracking estimated billings throughout the year and believe that billings for the final three months of the agreement will likely exceed the existing not to exceed limit of $185,000. Billings for the current fiscal year have exceeded the rate estimated at the inception of the agreement due to a larger than anticipated number of contractual reviews, notably for innovative pilot programs with different risk profiles than SVCE’s normal contractual arrangements. In addition, RWG contributed to the SVCE effort to establish and launch California Community Power (CC Power), a cost not specifically estimated and included in the initial budgeted amount.

ANALYSIS & DISCUSSION
The scope of work for fiscal year 2020 – 2021 is included in Exhibit A to the Agreement with RWG (see Attachment 2) and includes:

- Attendance at the monthly SVCE Board of Directors meetings and any special meetings and workshops as required by the CEO or Chair of the Board.
- Brown Act, Conflict of Interest and Public Records Act advice and representation.
- Preparation or review of consultant and vendor contracts.
- Advice to the CEO and designated staff on administrative and operational matters.
- Research and advice on legal questions asked by the Board, CEO and designated staff.
- Advice and assistance on other legal matters as may be assigned by the CEO.

STRATEGIC PLAN
The recommendation supports staff in all areas of the Strategic Plan.

ALTERNATIVE
Staff is open to alternatives from the Board.

FISCAL IMPACT
The recommendation results in a fiscal impact of $50,000 to Fiscal Year 2020-21. The current agreement with RWG for FY2020-21 is for a total of $185,000 and expires on September 30, 2021. This amendment will increase the total not-to-exceed amount up to $235,000.
ATTACHMENTS

1. Amendment to Agreement with Richards, Watson & Gershon for FY20-21 legal services
2. Agreement with Richards, Watson & Gershon for FY20-21 legal services
FIRST AMENDMENT TO AGREEMENT WITH RICHARDS, WATSON & GERSHON

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and RICHARDS, WATSON & GERSHON entered into that certain agreement entitled LEGAL SERVICES, effective on October 1, 2020, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and Richards, Watson & Gershon have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. COMPENSATION TO GENERAL COUNSEL of Original Agreement shall be amended to read as follows:

General Counsel shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed two hundred and thirty-five thousand and 00/100 dollars ($235,000.00) dollars based on the rates and terms set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference.

2. EXHIBIT B COMPENSATION of Original Agreement shall be amended to read as follows:

Authority shall compensate General Counsel for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to General Counsel under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total exceed two hundred and thirty-five thousand and 00/100 dollars ($235,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority

3. This Amendment shall be effective on August 11, 2021.

4. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.
RECOMMENDED FOR APPROVAL

________________________________________
Amrit Singh, Chief Financial Officer and Director of Administrative Services

GENERAL COUNSEL
RICHARD, WATSON & GERSHON
A Professional Corporation

By: __________________________
Name: ________________________
Title: _________________________
Date: __________________________

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: __________________________
Name: Girish Balachandran
Title: Chief Executive Officer
Date: __________________________

APPROVED AS TO FORM:

________________________________________
Counsel for Authority

ATTEST:

________________________________________
Authority Clerk
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY 
AND 
RICHARDS, WATSON & GERSHON 
FOR 
LEGAL SERVICES

THIS AGREEMENT, is entered into this 1st day of October, 2020, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and RICHARDS, WATSON & GERSHON, a PROFESSIONAL CORPORATION whose address is 44 Montgomery St., Suite 3800. San Francisco, CA 94104 (hereinafter referred to as "General Counsel") (collectively referred to as the “Parties”).

RECITALS:

A. Authority is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

B. General Counsel possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and General Counsel desire to enter into an agreement for Legal Services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM
   The term of this Agreement shall commence on October 1, 2020, and shall terminate on September 30, 2021, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED
   General Counsel shall perform each and every service set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

3. COMPENSATION TO GENERAL COUNSEL
   General Counsel shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed One hundred and eighty-five thousand and 00/100 dollars ($185,000.00) dollars based on the rates and terms set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference.

4. TIME IS OF THE ESSENCE
   General Counsel and Authority agree that time is of the essence regarding the performance of this Agreement.
5. **STANDARD OF CARE**

General Counsel agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to Authority and agrees that all services shall be performed by qualified and experienced personnel. General Counsel shall be responsible to Authority for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by General Counsel be found in such services or products, General Counsel shall correct the errors at no additional charge to Authority by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should General Counsel fail to make such correction in a reasonably timely manner, such correction may be made by Authority, and the cost thereof shall be charged to General Counsel. In addition to all other available remedies, Authority may deduct the cost of such correction from any retention amount held by Authority or may withhold payment otherwise owed General Counsel under this Agreement up to the amount of the cost of correction.

6. **INDEPENDENT PARTIES**

Authority and General Counsel intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of General Counsel except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of General Counsel’s services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers’ compensation plans, vacation and sick leave are available from Authority to General Counsel, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due General Counsel. Payments of the above items, if required, are the responsibility of General Counsel. General Counsel shall indemnify and hold harmless Authority and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Authority officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from General Counsel’s personnel practices. Authority shall have the right to offset against the amount of any fees due General Counsel under this Agreement any amount due to Authority from General Counsel as a result of General Counsel’s failure to promptly pay to Authority any reimbursement or indemnification arising under this section.

7. **NO RECOURESE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. General Counsel shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority’s constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

In the performance of this Agreement, General Counsel shall not discriminate against any
employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

9. **HOLD HARMLESS AND INDEMNIFICATION**

General Indemnification. To the fullest extent permitted by law, General Counsel shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of General Counsel, its officers, agents, servants, employees, subcontractors, materialmen, General Counsels or their officers, agents, servants or employees (or any entity or individual that General Counsel shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. General Counsel shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. General Counsel shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

General Counsel’s indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

10. **INSURANCE**

A. **General Requirements.** On or before the commencement of the term of this Agreement, General Counsel shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "C," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit General Counsel’s indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." General Counsel shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

B. **Subrogation Waiver.** General Counsel agrees that in the event of loss due to any of
the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, General Counsel shall look solely to his/her/its insurance for recovery. General Counsel hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either General Counsel or Authority with respect to the services of General Counsel herein, a waiver of any right to subrogation which any such insurer of General Counsel may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to Secure or Maintain Insurance. If General Counsel at any time during the term hereof should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the General Counsel’s name or as an agent of the General Counsel and shall be compensated by the General Counsel for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Authority, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by Authority are not represented as being sufficient to protect General Counsel. General Counsel is advised to confer with General Counsel’s insurance broker to determine adequate coverage for General Counsel.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. CONFLICT OF INTEREST

General Counsel warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. General Counsel and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to General Counsel’s services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, General Counsel may perform similar services for other clients, but General Counsel and its officers, employees, associates and subcontractors shall not, without the Authority Representative’s prior written approval, perform work for another person or entity for whom General Counsel is not currently performing work that would require General Counsel or one of its officers, employees, associates or subcontractors to abtain from a decision under this Agreement pursuant to a conflict of interest statute. General Counsel shall incorporate a clause substantially similar to this section into any subcontract that General Counsel executes in connection with the performance of this Agreement.
General Counsel understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require General Counsel to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

   General Counsel shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by General Counsel from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by General Counsel.

   The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of General Counsel, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if General Counsel is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of General Counsel, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL**

   Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

   In the event that General Counsel employs subcontractors, such subcontractors shall be required to furnish proof of workers’ compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by General Counsel. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

   General Counsel agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor’s work. Subcontractors hired by General Counsel shall agree to be bound to General Counsel and Authority in the same manner and to the same extent as General Counsel is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. General Counsel shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. General Counsel shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**

   A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by General Counsel pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. General Counsel shall not copyright any Report required by this Agreement and shall
execute appropriate documents to assign to Authority the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Authority, and all publication rights are reserved to Authority. General Counsel may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by General Counsel may be used by Authority in execution or implementation of: (1) The original project for which General Counsel was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

C. General Counsel shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by General Counsel pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by General Counsel without prior approval by Authority.

F. Authority shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by General Counsel prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. RECORDS
   General Counsel shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Authority that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. General Counsel shall provide free access to such books and records to the representatives of Authority or its designees at all proper times, and gives Authority the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after General Counsel receives final payment from Authority for all services required under this agreement.

16. PARTY REPRESENTATIVES
   The Chief Executive Officer (“Authority Representative”) shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Richards, Watson & Gershon shall represent General Counsel in all matters pertaining to the services to be performed under this Agreement.

17. INFORMATION AND DOCUMENTS
   A. General Counsel covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by General Counsel or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by General Counsel without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. General Counsel, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters
of support, testimony at depositions, response to interrogatories or other information concerning
the work performed under this Agreement or relating to any project or property located within the
Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided
General Counsel gives Authority notice of such court order or subpoena.

B. General Counsel shall promptly notify Authority should General Counsel, its
officers, employees, agents or subcontractors be served with any summons, complaint, subpoena,
otice of deposition, request for documents, interrogatories, request for admissions or other
discovery request, court order or subpoena from any party regarding this Agreement and the work
performed thereunder or with respect to any project or property located within the Authority.
Authority may, but has no obligation to, represent General Counsel or be present at any deposition,
hearing or similar proceeding. General Counsel agrees to cooperate fully with Authority and to
provide Authority with the opportunity to review any response to discovery requests provided by
General Counsel. However, Authority’s right to review any such response does not imply or mean
the right by Authority to control, direct or rewrite the response.

C. In the event Authority gives General Counsel written notice of a “litigation hold”,
then as to all data identified in such notice, General Counsel shall, at no additional cost to
Authority, isolate and preserve all such data pending receipt of further direction from the
Authority.

D. General Counsel agrees to comply with the confidentiality provisions set forth in
Exhibit “E,” attached hereto and incorporated herein by this reference.

E. General Counsel’s covenants under this section shall survive the expiration or
termination of this Agreement.

18. NOTICES

Any notice, consent, request, demand, bill, invoice, report or other communication
required or permitted under this Agreement shall be in writing and conclusively deemed effective:
(a) on personal delivery, (b) on confirmed delivery by courier service during General Counsel’s
and Authority’s regular business hours, or (c) three Business Days after deposit in the United States
mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth
below:

TO AUTHORITY:
333 W. El Camino Real
Suite 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO GENERAL COUNSEL:
Richard, Watson & Gershon
Attn: Gregory W. Stepanicich
44 Montgomery St., Suite 3800
San Francisco, CA 94104
gstepanicich@rwglaw.com
19. **TERMINATION**

In the event General Counsel fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, General Counsel shall be deemed in default in the performance of this Agreement. If General Counsel fails to cure the default within the time specified (which shall be not less than 10 days) and according to the requirements set forth in Authority’s written notice of default, and in addition to any other remedy available to the Authority by law, the Authority Representative may terminate the Agreement by giving General Counsel written notice thereof, which shall be effective immediately. The Authority Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to General Counsel as provided herein. Upon receipt of any notice of termination, General Counsel shall immediately discontinue performance.

In the event of Authority’s termination of this Agreement due to no fault or failure of performance by General Counsel, Authority shall pay General Counsel for services satisfactorily performed up to the effective date of termination. Upon termination, General Counsel shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by General Counsel or given to General Counsel in connection with this Agreement. Such materials shall become the property of Authority. General Counsel shall have no other claim against Authority by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

General Counsel shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. General Counsel shall, at all times, observe and comply with all such laws and regulations. Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the General Counsel to comply with this paragraph.

General Counsel represents and agrees that all personnel engaged by General Counsel in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. General Counsel represents and warrants to Authority that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. General Counsel further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

22. **ADVERTISEMENT**

General Counsel shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority.
Authority to do otherwise.

23. **WAIVER**
A waiver by Authority of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT**
This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Authority and General Counsel.

25. **AUTHORITY**
The individual(s) executing this Agreement represent and warrant that they have the legal Authority and authority to do so on behalf of their respective legal entities.

26. **INSERTED PROVISIONS**
Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

27. **CAPTIONS AND TERMS**
The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **AUTHORITY’S RIGHTS TO EMPLOY OTHER GENERAL COUNSEL**
Authority reserves the right to employ other General Counsel in connection with the subject matter of the Scope of Services.

29. **EXHIBITS**
The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of General Counsel’s proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**
General Counsel shall not be liable for any failure to perform its obligations under this Agreement if General Counsel presents acceptable evidence, in Authority’s sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion,
fire or other casualty, or other causes beyond General Counsel’s reasonable control and not due to any act by General Counsel.

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by General Counsel of the final payment made under this Agreement shall operate as and be a release of Authority from all claims and liabilities for compensation to General Counsel for anything done, furnished or relating to General Counsel’s work or services. Acceptance of payment shall be any negotiation of Authority’s check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by Authority shall not constitute, nor be deemed, a release of the responsibility and liability of General Counsel, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by Authority for any defect or error in the work prepared by General Counsel, its employees, subcontractors and agents.

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

34. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

36. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

37. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance
with other applicable rules concerning the interpretation of contracts.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

[Signature]
Don Rhoads
Interim Director of Finance & Administration

GENERAL COUNSEL NAME
RICHARD, WATSON & GERSHON
A Professional Corporation

By: [Signature]
Name: Gregory W. Stepanicich
Title: Shareholder
Date: 9/10/2020

SILICON VALLEY CLEAN ENERGY AUTHORITY
A Joint Powers Authority

By: [Signature]
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 9/10/2020

APPROVED AS TO FORM:

[Signature]
Counsel for Authority

ATTEST:

[Signature]
Authority Clerk
Exhibit A
Scope of Services

As General Counsel for SVCEA, Richards, Watson & Gershon shall provide the general legal services typically required by a joint powers authority in addition to those general legal services related more specifically to the operation of a community choice aggregation program as described below. These legal services shall include the following:

- Attendance at the monthly SVCEA Board of Directors (“Board”) meetings and any special meetings and workshops as requested by the CEO Or Chair of the Board.
- Brown Act, Conflict of Interest and Public Records Act advice and representation.
- Preparation or review of consultant and vendor contracts.
- Advice and preparation of documents related to personnel matters.
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters.
- Research and advice on legal questions asked by the Board, CEO and designated staff.
- Advice and assistance on other legal matters as may be assigned by the CEO.

Legal services will not include matters in which Richards, Watson & Gershon has a conflict of interest that precludes the law firm from representing SVCEA. General Counsel services also will not include energy contracts or regulatory matters before the California Public Utilities Commission (CPUC) that require specialized legal services in these areas of law.
**Exhibit B**

**Compensation**

Authority shall compensate General Counsel for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to General Counsel under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of One Hundred Eighty-Five Thousand and 00/100 dollars ($185,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

**Rates:**

<table>
<thead>
<tr>
<th>Shareholders</th>
<th>$325/Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associates</td>
<td>$275/Hour</td>
</tr>
<tr>
<td>Paralegals</td>
<td>$180/Hour</td>
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</tbody>
</table>

**Invoices:**

**Monthly Invoicing:** In order to request payment, General Counsel shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed).

**Reimbursable Expenses:**
Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority and shall only be reimbursed to the extent consistent with Authority’s travel policy.

**Additional Services:**
General Counsel shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority’s Chief Executive Officer prior to commencement of any additional services. General Counsel shall submit, at the Chief Executive Officer’s request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.
Exhibit C
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

GENERAL COUNSEL shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

(1) **Workers' Compensation:**
Statutory coverage as required by the State of California.

(2) **Liability:**
Commercial general liability coverage with minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.

(3) **Automotive:**
Comprehensive automotive liability coverage with minimum limits of $1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

(4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of General Counsel in the amount of at least $1,000,000.
Exhibit D
Confidentiality Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to General Counsel from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by General Counsel:

1. The Confidential Information disclosed to General Counsel in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by General Counsel or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.

2. Except for electric and gas usage information provided to General Counsel pursuant to this Agreement, Confidential Information does not include information that General Counsel proves (a) was properly in the possession of General Counsel at the time of disclosure; (b) is or becomes publicly known through no fault of General Counsel, its employees or representatives; or (c) was independently developed by General Counsel, its employees or representatives without access to any Confidential Information.

3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by General Counsel, or used for any purpose other than the purposes set forth in the Agreement.

4. General Counsel shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. General Counsel shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, General Counsel shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of General Counsel who have a “need to know” such Confidential Information.
Information in the course of their duties with respect to the General Counsel program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, General Counsel shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. General Counsel shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not General Counsel’s employee or representative (a “Third Party”), except where that Third Party has separately entered into a nondisclosure agreement with Authority.

5. Notwithstanding the above, General Counsel may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that General Counsel notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.

6. General Counsel shall immediately notify Authority if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person that could reasonably result in the use, disclosure, or theft of the Confidential Information.

7. It shall be considered a material breach of this Agreement if General Counsel engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. General Counsel understands that if Authority finds that General Counsel is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to General Counsel. General Counsel further understands that if Authority receives a customer complaint about General Counsel’s misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer’s information to General Counsel and shall notify the California Public Utilities Commission of the complaint.

8. General Counsel shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall General Counsel or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. General Counsel shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by General Counsel or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the General Counsel’s compliance with the terms of this Agreement.
9. General Counsel shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority’s written request, and at Authority’s option, General Counsel will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.

11. General Counsel acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, General Counsel hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by General Counsel or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.

12. In addition to all other remedies, General Counsel shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys’ fees, costs and disbursements) attributable to actions or non-actions of General Counsel and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.

13. When General Counsel fully performs the purposes set forth in the Agreement, or if at any time General Counsel ceases performance or Authority requires General Counsel cease performance of the purposes set forth in the Agreement, General Counsel shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
**Staff Report – Item 1j**

**Item 1j:** Receive Quarterly Decarbonization and Grid Innovation Programs Update for Q2 2021

From: Girish Balachandran, CEO

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation Programs

Date: 8/11/2021

**RECOMMENDATION**
Staff recommends the Board accept the Q2 2021 Update of the Decarbonization Strategy & Programs Roadmap.

**BACKGROUND**
To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable, and reliable electricity and innovative programs for the community, SVCE established a decarbonization strategy and programs roadmap (abbr. "Roadmap"). In December 2018, the Board approved the Roadmap, and since that time, staff has been working on implementation.

**ANALYSIS & DISCUSSION**
Attachment 1 is the most recent quarterly update, covering April through June of 2021. The quarterly update includes bulleted highlights and a table with a summary of updates and next steps for each initiative.

**STRATEGIC PLAN**
This item supports SVCE’s 2020-2021 Strategic Plan Goals 8 and 9 to support the achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030, and coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment.

**FISCAL IMPACT**
Accepting the Q2 2021 Update of the Decarbonization Strategy & Programs Roadmap has no fiscal impact.

**ATTACHMENTS**
1. Decarbonization Strategy & Programs Roadmap – Q2 2021 Update
Decarbonization Strategy & Programs Roadmap
Q2 2021 Update
August 11, 2021 BOD Meeting

Highlights:

- **Road to 2035: Panel Discussion with State Leaders and Senior Staff Workshop**: The June SVTEC meeting featured a panel discussion with CARB Chair Liane Randolph and CPUC Commissioner Cliff Rechtschaffen facilitated by SVCE's Director of Legislative and Regulatory Policy. This discussion focused on how local action can support the success of the Governor’s Executive Order N-79-20 that bans the sale of new internal combustion passenger vehicles in California by 2035. Approximately fifty individuals representing more than two dozen organizations attended the event. Following this meeting SVCE staff (Zoe Elizabeth and Don Bray) facilitated a meeting with SVTEC members and senior agency staff from CEC, CARB and CPUC. The meeting focused on how to increase and improve funding for EV’s and EV infrastructure.

- **GridShift: EV Charging Program Scale-Up**: Over the course of 6 months, the GridShift pilot helped SVCE customers save money and emissions by optimizing their EV charging according to their time-of-use electricity rate and California's electricity generation mix. The pilot, which concluded in April, received positive feedback on core app features, core app functionality, and user experience. Participants saved an average of $24 per month on energy bills, and a 2-month trial of low-carbon events helped avoid 4,000 lbs of CO2. In May, the SVCE Board of Directors authorized SVCE to scale up the pilot to a full program. Program marketing efforts and enrollment began in July 2021. In addition to low-carbon events, the full GridShift program will introduce a reliability-focused event season to support grid reliability.
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<thead>
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<th>Sector</th>
<th>Program</th>
<th>Q2 2021 Activities</th>
<th>Q3 2021 Outlook</th>
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</table>
| Power Supply  | **C&I Clean Power Offerings** Develop, market and sell additional SVCE power offerings to address large C&I customers seeking to buy clean power at competitive rates | - Developed new deterministic rate and revenue model reflecting new ‘B’ rates for commercial customers, and TOU rates for residential customers; this provides inputs to an updated ~5-year SVCE net revenue model that incorporates projected PCIA and generation rate changes  
- Developing supply portfolio options for ‘GreenPrime 24x7’ carbon free offering  
- Developing terms for pilot GreenPrime Direct offering | - Perform Ecoinvest analysis for pilot customer with new SVCE net revenue model and, if financially viable, execute contract  
- Continue detailed design work for GreenPrime 24/7 carbon-free offering, and pilot terms  
- Continue detailed design work for GreenPrime Direct offering and pilot terms |
|               | **Reach Codes** Provide model energy code supportive of all-electric design and EV infrastructure to member agencies along with consultant support | - 11 cities have passed Reach Codes  
- Technical support platform served 33 customers to date  
- Three dedicated Contractor trainings delivered | - Support post-implementation tool/training development for city staff  
- Ongoing technical support  
- Assist the two remaining member agencies as desired  
- Scale back on contractor outreach and trainings per budgetary restrictions |
| Built Environment | **All-Electric Showcase Grants** Provide incentives for all-electric buildings and share case studies about them and the professionals involved in their design | - Previously finalized the Building Decarb Joint Action Plan, which did not identify incentives at the time of new construction as a priority for accelerating building decarbonization. Therefore, this program is closed | **N/A** |
|               | **FutureFit Heat Pump Water Heaters** Provide incentives for electric heat pump water heaters and service panel upgrades to residents using natural gas currently | - Phase 1 (Air District co-funded program) closed to new enrollments, final draft of EM&V report received and final BAAQMD report received  
- 102 systems installed/operational, 100% program goal  
- Phase 2 (approved by Board in 2020) launched July 2020 and currently has 209 reservations processed, 85 project completions | - Phase 2 – continue to promote program  
- Begin with early phases of planning a phase 3 (part of FF homes and buildings) using learnings from phase 1.0 EM&V and 2.0 progress |
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<th>Category</th>
<th>Summary</th>
<th>Achievements</th>
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| Streamlining Community-Wide Electrification | Benchmark and streamline member agency’s permitting and inspection processes to identify barriers and opportunities to electrification | • Held two stakeholder roundtables to solicit feedback on Best Practices Guide for Streamlining Electrification Permitting  
• Presented at BayREN Forum  
• Closed out Phase 1.0 work with consultants  
• Developing program design for Phase 2.0 |
| Building Decarb Joint Action Plan      | Develop a joint action plan with member agencies to prioritize strategies and programs to advance building decarbonization | • (COMPLETED)                                                                                   |
| Resilience at Community Facilities     | Increase the individual and collective capacity of SVCE and our member agencies to reduce adverse impacts of power outages. | • Combined the previously approved Critical Community Facilities program with the newly approved and now launched Community Resilience program  
• 2 additional capex grants approved (Sunnyvale, Los Altos Hills); 2 planning grants approved and in process (Morgan Hill, Cupertino)  
• Draft resilience framework complete  
• Decision support tool beta version complete  
• Execute member agency capital project grant agreements on a rolling basis.  
• Launch technical assistance activities  
• Finalize resilience framework  
• Conduct outreach |
| FutureFit Fundamentals                  | Provide financial relief to contractors by expanding their knowledge of electrification technologies | • Completed development of the five FutureFit Fundamentals online training courses, including subtitled content  
• Completed loading of course content onto SJECCD Workforce Institute’s ‘Canvas’ online learning platform  
• Planned ‘alpha test’ with selected contractors and other participants  
• Launch delivery of course content with Alpha customers July/August, including $500 stipend payments  
• Conduct outreach to target audiences and begin full course conduct in September  
• Finalize and launch contract for incentive administration services for installation incentive component |
| CRCR Bill Relief                       | Provide immediate bill relief to residential CARE/FERA customers, and to qualifying small business customers | • Over $3.4M was applied directly to customer bills (vs initial budget of $3.5M)  
• Over 9k small businesses contacted; Over 3k small businesses applied and received credit;  
• Draft EM&V report received from ADM  
• Review draft EM&V report and finalize with ADM |
<table>
<thead>
<tr>
<th>FutureFit Homes &amp; Buildings</th>
<th>Regional Coordination</th>
<th>Accessible Financing</th>
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<tr>
<td>Provide comprehensive assistance to SVCE customers in navigating and accessing the many existing and forthcoming, non-SVCE led energy programs providing financial assistance for building decarbonization and energy efficiency.</td>
<td>SVCE will initiate regular regional stakeholder convenings to coordinate program alignment across building decarbonization workstreams.</td>
<td>Assess feasibility of financing mechanisms to unlock equitable financing for energy efficiency and electrification across the region, particularly for low-income communities.</td>
</tr>
<tr>
<td>• Hosted final 3 design review meetings with tiger team</td>
<td>• No activities in Q2</td>
<td>• Attended meetings hosted by BDC to identify strategies for CCAs to pursue on-bill tarifed financing</td>
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<tr>
<td>• Finalized scope of program design</td>
<td></td>
<td>• Providing support to BDC (in terms of program design feedback &amp; materials review) in coordination with other CCAs for the CPUC’s Clean Energy Finance Proceedings</td>
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<thead>
<tr>
<th>Local Policy to Decarbonize Existing Buildings</th>
<th>Feasibility Assessment for Natural Gas Phase Out By 2045</th>
<th>Mobility</th>
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<tbody>
<tr>
<td>Assess and support potential policy levers Member Agencies can explore to mitigate emissions from existing buildings.</td>
<td>Carry out a feasibility assessment to identify technical, legal and economic barriers and opportunities for phasing out natural gas service by 2045, in the SVCE service territory.</td>
<td>EV Infrastructure Strategy &amp; Plan</td>
</tr>
<tr>
<td>• Work to begin in FY22</td>
<td>• Work to begin in FY22</td>
<td>Develop a near-to mid-term strategy for EV infrastructure and a set of program implementation plans</td>
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<td>• (COMPLETED)</td>
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| | | |
| | | (COMPLETED) |

*Develop incentive roadmap based on external funding (SGIP, TECH, etc.) and SVCE service territory needs by customer segments. | | Begin scoping RFP for first phase of program implementation. |
| | | Coordination & design efforts to ramp up |
| | | Initiate stakeholder engagement for kick-off forum meeting |
| California Electric Vehicle Infrastructure Project (CALeVIP) Work with California Energy Commission to launch a regional CALeVIP project | • Completed nearly all application review with program administrator  
• Informed majority of year 1 funding recipients  
• Evaluated application trends, started to prepare summary statistics | • Finish review of application data and creation of summary materials  
• Share some summary data publicly and inform likely year 2 and 3 recipients  
• Track progress of projects |
| Priority Zone DCFC Competitive application to receive an additional incentive (on top of CALeVIP) for DCFC in “priority zones” that support nearby SVCE-designated multifamily housing clusters | • Waited for final CALeVIP data to be available to see if selected Priority Zone DCFC projects will receive funding  
• Developed approach for next phase of this program based on CALeVIP data and program goals | • Confirm final CALeVIP funding decisions  
• Prepare to open a new solicitation round for DCFC with updated rules and process |
| MUD Technical Assistance Technical assistance and help applying for pertinent CALeVIP rebates for charging at multifamily housing properties | • Continued outreach to prioritized commercial and MUD properties  
• 21 program participants  
• Supported participants with BAAQMD Charge! applications | • Conduct on-going outreach – 2nd round of targeted sites  
• Continue to develop site assessments |
| S/M Workplace Charging Rebates Technical assistance and help applying for pertinent CALeVIP rebates for charging at small and medium workplace properties | • Due to synergies in program efforts, previously decided to merge with MO4: MUD Technical Assistance | • Merged with MO4, above |
| Fleet Electrification Grants Competitive application for SVCE’s fleet electrification planning support and funding for site upgrades. Targeting a broad set of fleet types, to create widely applicable fleet electrification planning templates | • No further development work  
• Participated in a few calls on other relevant fleet programs in the region  
• Tracked other programs also supporting fleets | • Work on finalizing planned approach  
• May move forward with solicitation for consultant to support program depending on bandwidth and other priorities |
| Silicon Valley Transportation Electrification Clearinghouse (SVTEC) Regional group of key stakeholders focused on information sharing, solving critical issues and attracting | • Held the quarterly meeting in June with CARB and CPUC leadership  
• Continue to hold meetings with EVSE companies to develop permitting and interconnection initiatives | • Interview member agencies on funding goals  
• Further develop and continue to execute regional initiatives aimed at reducing soft costs of EVI deployment |
### External Funding

External funding to the SVCE community in support of EV infrastructure deployment.

### Regional Recognition

Recurring recognition for best practices in EV infrastructure deployment, and support for local organizations in taking next steps.

- Low interest and participation level in second round, despite strong outreach
- Re-evaluating program goals and strategy

### Virtual Power Plant

Support “virtual power plants” made up of cloud-based aggregations of customer-sited resources to support grid integration and monetize value from connected, controllable loads.

- By way of background, SVCE joined EBCE, PCE and Silicon Valley Power in the joint issuance of an RFP for resource adequacy from behind-the-meter solar and storage systems in Q4 2019. Staff executed a contract with Sunrun in Q3 2020. Provided marketing support and had project management discussion this quarter.
- Considered deploying a white-labeled app pilot for home device load management in support of summer readiness. Decided that timing did not work.
- Began promoting the state’s Emergency Load Reduction Program (ELRP) to our C&I customers.
- Continue Sunrun program support, and track program participation and installs
- Promote ELRP further, in partnership with PG&E
- Move forward on white-labeled app for home device load management as a full-scale program for summer 2022 – draft a solicitation for support

### Customer Resource Center (eHub)

Develop online customer resource center to enable engagement, education and action related to clean electricity, EVs and home electrification.

- Implemented paid advertising campaign which includes digital, out of home and in-language advertising
- Conducted the ‘Go Electric’ Tour sweepstakes for customers to engage with eHub and learn about electrification at home and on the road
- Launched a smart plug and smart bulb promotion for customers to control devices and save on Time-Of-Use rates
- Launched a summer 2021 resiliency promotion on portable power stations, evaporative coolers and air purifiers
- Continue tracking engagement metrics
- **52,187 Unique eHub Engagements** since launching in September 2020

### Education & Outreach

- Metrics Apr. 1 - June. 31:
  - 6,297 unique visits to the SVCE eHub webpages
  - 2,450 unique visits to the EV Assistant tool
  - 2,240 unique visits to the Solar+Battery Assistant tool along with 54 new installation leads
  - 7,460 unique visits to the Appliances Assistant tool (not including June 2021 metrics due to reporting dashboard errors)
<table>
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<tr>
<th>Community Engagement Grants</th>
<th>Innovation Partners</th>
<th>IN2: Innovation Onramp</th>
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<tr>
<td>Partner with local organizations in hard-to-reach customer segments to promote SVCE offerings and programs</td>
<td>Engage with key strategic partners to participate in the local innovation ecosystem and provide a voice for SVCE customers and the decarb mission</td>
<td>Provide small grants to support innovation through pilot projects with external partners</td>
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<tr>
<td>• Future launch date TBD; on-hold due to COVID-19</td>
<td>• No activities for Q2</td>
<td>• Finalize all negotiations for fourth cohort of pilots resulting from Spring 2021 application cycle</td>
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<td>• Prepare for fifth call for applications for fall 2021</td>
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<td>• Ongoing management of pilots</td>
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<td>• Consider issuing fifth call for applications fall 2021 potentially joint with other CCAs &amp; munis</td>
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<td>• Ongoing management of pilots</td>
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- Launched translated websites for the EV Assistant in Spanish, Traditional Chinese and Vietnamese
- Delivered email campaigns focused on:
  - Happy Earth Day
  - Time-Of-Use with the Appliances Assistant smart bulb and plug promotion
  - ‘Go Electric’ Tour Sweepstakes email campaign

Note: Engagements are driven largely by email campaigns delivered within the quarter. Distribution of metrics will vary.

- Explore possibility of reviving program as part of the programs equity framework development
Staff Report – Item 1k

Item 1k: Adopt Resolution Moving Reinstatement of SVCE’s Delinquent Payment Policy to November 2021

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations

Date: 8/11/2021

RECOMMENDATION
Staff requests the Board of Directors (Board) approve and adopt Resolution 2021-18, moving re-instatement of SVCE’s Delinquent Payment policy from July 2021 to November 2021.

BACKGROUND
At its June 9th meeting, the SVCE Board voted to resume SVCE’s Delinquent Payment Policy, effective July 2021. This timing was predicated on PG&E’s scheduled service disconnection moratorium end date of June 30, 2021, as ordered by the CPUC.

However, on June 24, 2021, in Decision D.21-06-036, the CPUC ordered that PG&E and other IOUs extend their service disconnection moratorium by three months, to September 30, 2021. In addition, on July 16, 2021, the Governor signed AB135 authorizing $993 million in funding for the California Arrearage Payment Program (CAPP) to provide credits to utility customers carrying outstanding debts past 60 days and incurred during the COVID crisis (March 4, 2020 – June 15, 2021). These credits must be applied by the IOUs to customer bills before the end of January 2022. The credits will be applied on a pro-rata basis to outstanding customer debts held by PG&E and community choice energy agencies.

As specified in the June 9 resolution to restart the Delinquent Payment Policy, late payment notices (LPNs) were sent from SVCE in July 2021. They were modified to acknowledge the difficult circumstances presented by the COVID crisis and provide information in four languages on a full range of support programs and resources available. Given the extension of the service disconnection moratorium noted above, the LPN was also modified to not include the possibility of being returned to PG&E if sufficient payment was not received. Thus, the July mailing constituted outreach to customers significantly in arrears on currently available payment support and resources.

In addition to communication via the late payment notice, SVCE also reached out directly in July via mail and email to CARE/ FERA customers eligible for the Arrearage Management Plan program (AMP) and who have not yet enrolled – to encourage enrollment and participation in this debt forgiveness program.

ANALYSIS & DISCUSSION
PG&E’s service disconnection moratorium has been extended by three months to September 30, 2021, and significant new customer credits funded by the State will be applied to customer balances in arrears before the end of January 2022.

As such, SVCE staff requests that re-start of the Delinquent Payment Policy be extended by four months, to November 2021. This means SVCE customers, regardless of arrearage amount or days overdue, would receive at least three late payment notices beginning in November and over three consecutive months. No customers
would be returned to PG&E before February of 2022. This will allow time for customer bill credits to be fully applied under the California Arrearage Payment Program (CAPP), which should significantly lower overall SVCE arrearage, and significantly reduce the number of customers that would qualify for return to PG&E under the delinquent payment policy.

**STRATEGIC PLAN**
This recommendation balances SVCE strategic plan goals described in Goal 10 ‘empower customers with the awareness, knowledge and resources to make effective clean energy choices’, and Goal 13 ‘commit to maintaining a strong financial position’.

**ALTERNATIVE**
Staff is open to suggestions from the Board of Directors, but feedback from previous meetings has been taken into account for this resolution.

**FISCAL IMPACT**
Moving reinstatement of the Delinquent Payment Policy will allow time for credits under the California Arrearage Payment Program to be applied. This will help customers with delinquent payments meet their payment obligations and remain customers of SVCE, while reducing SVCE’s outstanding customer balances currently totaling more than $5 million.

**ATTACHMENT**
1. Resolution 2021-18 Modification of the Reinstatement Date of the Delinquent Payment Policy
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY MODIFYING THE REINSTATMENT DATE OF THE DELINQUENT PAYMENT POLICY

WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, at the May 10, 2017 Board of Directors Meeting, the Board adopted the policy FP10, the Delinquent Accounts & Collections Policy, authorizing return of SVCE customers to PG&E for non-payment; and

WHEREAS, in March of 2020, due to the outbreak of the COVID-19 pandemic and statewide shelter-in-place orders, PG&E suspended their service disconnection policy for non-payment, and SVCE suspended its return of customers to PG&E for non-payment; and

WHEREAS, since March of 2020, SVCE customer arrearage amounts have doubled to nearly $6 million, and the number of customers in arrears has grown from 13,000 to 21,000; and

WHEREAS, COVID restrictions are being lifted, economic conditions are improving, and PG&E was scheduled to reinstate its service disconnection policy effective June 30, 2021; and

WHEREAS, a broad range of payment plans, discounts and debt relief programs are now available to help impacted customers address their past-due payments; and

WHEREAS, SVCE seeks to reduce arrearage and avoid potential PG&E service disconnections by helping customers identify and utilize available debt forgiveness and financial support programs; and minimize customer returns to PG&E, financial write-offs of bad debt, and exposure to additional arrearage; and

WHEREAS, on June 9, 2021, the Board of Directors of the Silicon Valley Clean Energy Authority approved Resolution No. 2021-12 reinstating SVCE’s delinquent payment policy effective July 1, 2021; and

WHEREAS, on June 24, 2021, the California Public Utilities Commission voted to approve Decision D.21-06-036, extending PG&E’s service disconnection moratorium by three months, from June 30, 2021 to September 30, 2021; and
WHEREAS, on July 16, 2021, the Governor approved Assembly Bill 135, establishing the California Arrearage Payment Program (CAPP), which will provide direct credits to customers with past-due balances of 60 days or more, for debts incurred between March 4, 2020 and June 15, 2021, with credits to be applied no later than January 31, 2022.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve, determine, and order as follows:

Section 1. SVCE’s delinquent payment policy will be reinstated effective November 1, 2021. Affected customers will receive a minimum of three monthly late payment notices before being returned to PG&E; no customer returns will occur before February 2022.

Section 2. Late Payment Notices (LPNs) will be expanded to describe a full range of payment support and debt relief options available, and this information will be provided in four languages; notices will acknowledge the difficult circumstances presented by COVID and thank customers for their support of our communities’ clean energy goals.

Section 3. A separate email and letter campaign will be directed to eligible CARE/FERA customers who have not yet enrolled in the Arrearage Management Plans (AMP) program, which provides for debt forgiveness.

PASSED AND ADOPTED this 11th day of August 2021, by the following vote:

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Chair

**ATTEST:**

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Andrea Pizano, Board Secretary
Staff Report – Item 1

Item 1: Adopt Resolution Endorsing the ZEV2030 Initiative

From: Girish Balachandran, CEO

Prepared by: Bena Chang, Senior Government Affairs Manager Policy

Date: 8/11/2021

RECOMMENDATION
Staff recommends that the Board endorse ZEV2030 Initiative by the adoption of Resolution 2021-19.

BACKGROUND
In September 2020, Governor Newsom issued Executive Order N-79-20, which calls for the elimination of new internal combustion passenger vehicles in California by 2035. ZEV2030 is a nonprofit whose mission is to achieve 100% zero emission light-duty vehicles sales in California by 2030. The organization’s two objectives are:

1) To change the current paradigm that electric vehicles are only for an elite few, to one that shows EVs are an economic and realistic climate solution. The organization disseminates news and reports related to this objective; and

2) To build a large and diverse coalition that supports the goal of 100% zero emissions vehicle sales in California by 2030 to influence policy makers.

Other ZEV2030 coalition members include MCE and the cities of Mountain View, Berkeley, Hayward, Oakland, San Leandro, Richmond, and Culver.

ANALYSIS & DISCUSSION
The ZEV2030 Initiative is aligned with SVCE’s efforts to encourage widespread electric vehicle adoption and transition away from internal combustion engine vehicles. A 2030 goal for all zero emission vehicle sales also aligns with the Board’s endorsement of the Beyond Gasoline Initiative, which calls for a 50% reduction in gasoline use by 2030.

For the reasons stated above, staff recommends the Board adopt the attached Resolution 2021-19.

STRATEGIC PLAN
The ZEV2030 Initiative is aligned with SVCE’s Strategic Plan Goal 8, “Work with the community to plan and track achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030”.

ALTERNATIVES
The Board could choose not to endorse the initiative or suggest another action.
FISCAL IMPACT
None.

ATTACHMENT
1. Resolution 2021-19, Endorsing the ZEV2030 Initiative
WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County;

WHEREAS, according to the Intergovernmental Plan on Climate Change (IPCC), increasing greenhouse gases (GHG) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030;

WHEREAS, Silicon Valley Clean Energy has adopted an organizational goal to achieve energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030;

WHEREAS, Silicon Valley Clean Energy has adopted a strategic planning goal to work with the community to plan and track energy and transportation GHG reductions;

WHEREAS, the transportation sector is the largest source of Santa Clara County’s greenhouse gas emissions;

WHEREAS, electrifying the transportation sector needs to be at the forefront of discussion, innovation, and action in a concerted effort to address the climate crisis;

WHEREAS, zero emission vehicles and related infrastructure services are an important and growing sector of California’s’ economy;

WHEREAS, phasing out fossil fuel-powered internal combustion vehicles can lead to a reduction in oil refineries and pumpjacks and reduce harmful local public health impacts in vulnerable communities; and

WHEREAS, the ZEV2030 Zero Emission Vehicle Pledge, available at ZEV2030.org, articulates the dire need for reform to California’s transportation system and its commitment to decarbonizing and combating the climate crisis;

NOW, BE IT RESOLVED that the Board endorses the efforts of the ZEV2030 Initiative to have all new vehicles be zero emissions in California by 2030.
PASSED AND ADOPTED this 11th day of August 2021, by the following vote:

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Chair

ATTEST:

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Andrea Pizano, Board Secretary
RECOMMENDATION
Staff recommends the Board of Directors approve reducing the current membership of the Finance and Administration Committee to five members due to an unexpected vacancy until new appointments are made in February 2022.

BACKGROUND
The Finance and Administration Committee was formed by the Board in February 2018 to provide financial and administrative oversight of SVCE. Tasks include budgeting, financial reporting, monitoring of internal controls, review financial and administrative policies and oversee investment strategies. The Finance and Administration Committee meets quarterly and as needed, and was appointed at the February 10, 2021 Board of Directors meeting to include the following members: Vice Chair Liz Gibbons, Director Yvonne Martinez Beltran, Director Rob Rennie, Alternate Director Larry Klein, Alternate Director Bryan Mekechuk, and Trevin Barber, Sr. Management Analyst for the City of Gilroy (six members total).

ANALYSIS & DISCUSSION
Staff learned Committee member Trevin Barber is no longer with the City of Gilroy, which leaves a vacancy on the Finance and Administration Committee. Rather than fill this vacant seat with few remaining meetings left in the year, staff is proposing the Board of Directors approve to reduce the membership of the committee to five members until annual appointments of committees are made in February 2022.

ALTERNATIVE
Staff is open to alternatives from the Board of Directors, including filling the vacant seat to make a six-member committee if desired.

FISCAL IMPACT
No fiscal impact as a result of reducing the membership of the committee.
At the June 25, 2021 Executive Committee meeting, the committee received a presentation from Director of Regulatory and Legislative Policy Melicia Charles and Director of Decarbonization and Grid Integration Programs Aimee Bailey regarding diversity, equity, inclusion and equity framework for programs.

The committee received a presentation from CEO Girish Balachandran on a debrief of the feedback received for SVCE’s FY ’22 Strategic Plan and next steps in the development and approval process for the plan. An update will be provided to the Board of Directors at the August Board of Directors meeting.

CFO and Director of Administrative Services Amrit Singh presented a kick-off of SVCE’s 2022 Budget and received direction from the committee which included the following: create a rainy-day fund for power procurement, increasing reserves, and a change in policy that would allow CEO Balachandran the ability to make staffing changes without returning to the Board of Directors for approval. Staff has taken these comments and incorporated them into the presentation being brought to the Board of Directors for the August Board of Directors meeting.

Materials from the June 25, 2021 meeting can be found here: [SVCE Executive Committee Meeting Materials, 6/25/21](#)

The next meeting of the Executive Committee will be August 27, 2021 at 2:45 p.m.; materials will be posted no later than 72 hours in advance of the meeting.
The Finance and Administration Committee met August 2, 2021 to consider recommending the Board of Directors authorize execution of the Power Supply Contract with California Community Choice Financing Authority (CCCFA) and other related documents to enable SVCE to enter into a 30-year energy prepayment transaction, and recommend approval of the FY 2021-22 Proposed Operating Budget.

The committee received a presentation from CFO and Director of Administrative Services Amrit Singh on the current status of the prepay transaction and supporting documents that would be brought to the board for approval at the August Board of Directors Meeting. Mike Berwanger of PFM Financial Advisors LLC was also present to answer questions from the Committee. Following discussion, the Committee voted unanimously to recommend the Board of Directors authorize execution of the Power Supply Contract with CCCFA and related supporting agreements to enable SVCE to enter into a 30-year energy prepayment transaction. This item is on the regular agenda for the Board of Director’s consideration.

The committee recommends reading the draft prospectus (Preliminary Official Statement) under which the bonds will be sold. This offering document includes a summary, although still detailed, of the prepayment transaction, and is included in the supporting materials as Attachment 10 of the Prepay Approval item on the Regular Calendar.

CFO and Director of Administrative Services Singh presented a PowerPoint on SVCE’s 2021-22 Proposed Operating Budget which included information on a request for the Chief Executive Officer to Act as Chief Personnel Officer, and updated Budget and Reserves policies. The Committee discussed the proposed changes to the budget and reserves policies, authorizing the CEO as Chief Personnel Officer, and general hiring practices. Following discussion, the Committee voted unanimously to recommend the Board of Directors approve the FY 2021-22 Proposed Operating Budget, a resolution authorizing the CEO to act as Chief Personnel Officer and approve the updated budget and reserves policies. This item is also included on the regular agenda for the Board of Directors to provide feedback prior to bringing the item for approval at the September Board of Directors meeting.

Materials from this meeting can be found here: SVCE Finance and Administration Committee, August 2, 2021

The next meeting of the Finance and Administration Committee will be scheduled in December; materials will be posted no later than 72 hours in advance of the meeting.
Staff Report – Item 1p

Item 1p: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 8/11/2021

No report as the Audit Committee has not met since March 3, 2021.

The next meeting of the Audit Committee will be August 18, 2021, 9:00 a.m. Materials will be posted not less than 72 hours prior to the meeting.
Staff Report – Item 1q

Item 1q: Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

From: Andrea Pizano, Board Clerk/Executive Assistant

Date: 8/11/2021

No report as the Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee has not met since June 3, 2021.

The next meeting of the Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee will be August 16, 2021, 1:00 p.m. A report will be provided on the Consent Calendar of the September 8, 2021, Board of Directors meeting.
Staff Report – Item 1r

Item 1r: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 8/11/2021

Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held its board meeting on Wednesday, June 16, 2021.

Attached is a report from Interim General Manager Jim Shetler; materials from this meeting can be found here on the CC Power website: CC Power Meeting, 6/16/21

The next meeting of the board will be August 18, 2021 at 1:00 p.m.; meeting materials can be found on the CC Power website: https://cacommunitypower.org/meetings/

ATTACHMENT:
CA Community Power Summary from Interim General Manager Jim Shetler, June
TO: CC Power Board of Directors  
FROM: Jim Shetler – Interim General Manager  
SUBJECT: Report on CC Power Board of Directors Meeting – 6/16/21

The CC Power Board of Directors held a specially scheduled meeting on Wednesday, 6/16/21, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: [https://cacommunitypower.org](https://cacommunitypower.org)

Highlights of the meeting included the following:

- **Public Comment**
  - One public comment was received regarding the status of the development of policies for CC Power and the need to ensure that these are finalized before any new projects are initiated by CC Power.

- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the 5/19/21 Regular Board Meeting

- **Ad Hoc Committee Report** – Selection of the next Interim General Manager
  The ad hoc Committee recommended that the Board approve selection of Tim Haines (Grid & Power Symmetry, LLC) as the next Interim General Manager of CC Power. After discussion, the Board unanimously approved the selection of Mr. Haines. Mr. Haines then expressed his appreciation for being selected by the Board, looks forward to the engagement with the members, and discussed his desire to work with the members on expanding the scope of projects for CC Power.

- **Recognition of Outgoing Interim General Manager, Jim Shetler**
  The Board considered and unanimously approved a resolution and plaque thanking outgoing Interim GM Jim Shetler for his contributions to the formation of CC Power JPA and the initial efforts in standing up the organization and managing the LDS project. Mr. Shetler thanked the Board for the recognition and the opportunity to serve the members. Mr. Shetler also provided some observations for future Board consideration, including development of delegations of authority to the General Manager/staff and development of CC Power policies in advance of initiating new projects.

- **CC Power Budget Adjustment**
  The Interim General Manager provided a request for adjustment to the 2021 CC Power Budget to cover two items:
1. Adjustment to the General Manager services in the amount of $5,000 to be allocated in June and July to cover the transition from Interim General Manager Jim Shetler to Interim General Manager Tim Haines.

2. Adjustment of the LDS Project allocations to allow Valley Clean Energy (VCE) to participate at a capacity of 10 MW. This includes reimbursement for costs incurred during Phase 1 and covering its share of costs for the current Phase 2 of the project. This will not result in any overall budget increase but will result in a decrease in costs for the other LDS Project participants.

The requested budget adjustments were approved by the Board with VCE abstaining due to its request to be added to the LDS Project.

- Consideration of Amendment 1 to the LDS Project Phase 2 Cost Sharing Agreement

  Due to the request for VCE to join the LDS Project, the Phase 2 Cost Sharing Agreement requires amendment to add VCE as a participant, which requires Board approval. After a short discussion, the Board unanimously approved the amendment and authorized the Interim General Manager to execute the agreement with the participants.

- Interim General Manager’s Report

  The Interim General Manager provided updates on:

  o Administrative Items
    ▪ Status of Conflict-of-Interest Code review at the FPPC
    ▪ Formal approval by the Secretary of States’ Office of the CC Power JPA.

  o LDS Project Update
    ▪ Provided an overview of the status of the shortlisting of the developers, the reassessment of the participant capacity needs, and the expectation that this will result in streamlining of the short-list.
    ▪ Noted that initial discussions with the short-listed developers has commenced, the formal negotiations will commence shortly, that it is expected that final contracts will be available for posting in September, and that the last quarter of the year would be used for participant and CC Power approvals of the agreements. It was also noted that the CC Power budget will need to be amended to accommodate the approval process for the last quarter of 2021.

- Discussion on Individual Member Items

  – The Board held its usual discussion on member updates and possible items that CC Power should be considering for opportunities in the future. These discussions included the following:
    o Update by the members on actions they are initiating to support the grid in light of the expected heat wave that will impact CA this week.
    o Request by Directors Pepper and Hale that the Board address the issue of CC Power policies before any new projects are initiated.
    o Consideration of CC Power developing an RFQ on behalf of the members for long lead-time resources that would be needed to meet CPUC mandates.
    o Addressing possible procurement efforts for offshore wind and geothermal generation.

Based upon these discussions, the Board requested that the Project Oversight Committee evaluate options for developing an RFQ process for CC Power procurement of long lead-time generation resources, including geothermal, for consideration at the August Board meeting.
Staff is maintaining a list of future project proposals, which is attached. These will be factored into discussions for future projects.

Please feel free to contact me if you have any questions on this report.
List of Possible Future Projects for CC Power Consideration

- Evaluating a central procurement role for that may be mandated, with costs collected from other LSEs, rather than being on the receiving end of charges from investor-owned utilities.
- Development of offshore wind projects.
- Small scale battery projects that could be strategically sited to support grid reliability needs.
- Financing authority for electrification programs
- Joint program for demand response
- Back-office support (e.g. – data management, customer services)
- Central administration of CPUC mandated programs
- Development of demand response programs for large scale agriculture pumping and HVAC loads
- Development of RFQ process for long lead time generation resources.
Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 8/11/2021

REPORT

SVCE Staff Update

We are pleased to announce that Justin Zagunis has been promoted to be SVCE’s new Manager of Decarbonization and Grid Innovation Programs. Since joining SVCE at the start of 2019 as a programs Analyst, Justin has been an integral part of establishing our program design process, bringing on key partners to support implementation, and launching programs across the decarb portfolio. Among other projects, he has worked closely on the EV infrastructure plan, Innovation Onramp pilots, and how to approach virtual power plant deployment. Prior to SVCE, he worked as a Resource Planner at Palo Alto and received a Master’s Degree in Civil Engineering from Stanford.

We would also like to announce Rebecca Fang has been promoted to Data Analyst. Since joining SVCE in July 2019 as an Associate Data Analyst on the Decarbonization & Grid Innovation team, Rebecca has led the development of SVCE’s data analytics platform, DAISY, and conducted strategic analyses to support SVCE’s mission of deep decarbonization. Prior to SVCE she studied at Stanford University, where she received an M.S. in Civil and Environmental Engineering, with a focus on energy.

Melody Vega joined SVCE on June 28, 2021 as the Interim Executive Assistant. Melody worked for 39 years in public service for the City of Palo Alto. Over this course, she worked in three departments: Purchasing, Human Resources and Utilities. While in Utilities, she gave administrative support to the Resource Management Division and its Assistant Director. Her duties included keeping account of contracts and amendments, invoice processing, and facilitating materials for Council and Utility Advisory Commission packets. Melody is a Bay Area native, having grown up in Mountain View, and now resides in Fremont.

Dorothy Roberts will be serving as Interim Clerk for SVCE through a contract with Regional Governmental Services through December of 2021. Dorothy has over 30 years in local government experience, serving cities in Florida, Colorado, and most recently, northern California. She has held various positions in of the offices of the City Manager, City Clerk, and Finance. Most recently, Dorothy served as City Clerk to the City of Napa for nine years. Dorothy holds a BA in English from the University of South Florida and a MPA in Public Administration with a concentration in Environmental Policy and Law from the University of Colorado, Denver.

Anna Crouch joined SVCE on July 6, 2021 as a Decarbonization and Grid Innovation Data Analyst Intern. Anna will be with us for 12-weeks for a summer internship where her main focus will be EV and EV charging data, acquiring new data sets, researching trends, and compiling results. Anna holds a Master in Urban and Regional Planning from the University of Minnesota and a BFA in Theatre from NYU.

Bob Tang joined SVCE July 12, 2021 as a consultant to manage SVCE’s renewable resources currently under various stages of development. Bob has over 25 years of experience in municipal utility power resource planning, procurement, operations, and the related regulatory issues. Most recently, Bob worked as Power Resource Manager for Riverside Public Utilities responsible for the negotiation/administration of power resource contracts.
CAISO and wholesale settlements, and management of renewable resource developments. Bob holds a BS in Electrical Engineering from the University of Sao Paulo, Brazil, and a MS and a PhD in Electrical Engineering from UCLA.

Nick Pappas joined SVCE July 19, 2021 as a consultant advising the CEO, Power Supply, and Policy teams. Nick has worked in energy and climate policy in California for ten years and has expertise related to SVCE’s state legislative and regulatory obligations related to power procurement and other areas. Most recently, Nick served as Director of Strategic Initiatives for CalCCA, where he led CalCCA’s engagement in the Integrated Resource Plan and Resource Adequacy proceedings and managed CalCCA’s data analytics team. Previously, Nick was an active participant in the development of state energy policy in roles as staff to a State Assemblymember and legislative advocate for a large electric utility. Nick has a BA in Economics and MS in Energy Systems from the University of California, Davis.

Comments on Clean Energy Investments Infrastructure Package
On July 8, 2021, SVCE joined 5 other CCAs in sending a joint letter on clean energy federal infrastructure priorities to California’s two Senators and each CCA’s Congressional delegation members. The letter covered priorities including allowing CCAs to receive funding in federal programs, creating financing and tax credits for energy projects, requesting a focus on hard-to-serve communities, and increasing permitting flexibility and non-financial support. The letter was well-received by legislators. A copy of the letter is included in the board packet.

CEO Agreements Executed
The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

1) Evmatch, Amendment: Multi-family EV Charger Sharing Platform, expiration extended to 12/31/21
2) Ecology Action, Amendment, EV Accelerator in low and moderate income multifamily properties, expiration extended to 12/31/21
3) EV Energy Corp, SAAS Agreement, NTE $400,000
4) Buro Happold, Amendment, Consulting Services, expiration extended to 12/31/22
5) Management Partners, INC, Agreement, Management Consulting Services, NTE $90,000
6) City of Saratoga, Capital Projects Grant, NTE $139,444
7) ADM, Task Order, Innovation Onramp (IO) Impact Metrics, NTE $9,290
8) San Jose Evergreen Community College District – Workforce Institute, Amendment, Develop an online asynchronous Training, expiration extended to 6/30/22
9) ADM, Task Order, Project Chrysalis Evaluation, NTE $11,190
10) Securicon, Agreement, Security Assessment and Consulting Services, NTE $26,508
11) Tedesco & Associates, Agreement, Multiple Power Resource Position Search, NTE $101,100
12) Meyers & Nave, Agreement, Legal Services, NTE $25,000
13) Orrick, Herrington & Sutcliffe, LLP, Amendment, Legal Services, expiration extended to open ended
14) Abbot, Stringham & Lynch, Amendment, IT Audit and Focused Security Assessment, expiration extended to 7/31/21
15) HBT, Agreement, Power Resources Management Assessment, NTE $119,600
16) Beth Sussman Consulting, Agreement, Hogan 360 Degree Feedback Process, expiration date extended to 9/30/21
17) School of Thought, Amendment, Media Planning and Marketing Services, expiration date extended to 10/31/21
18) Vista Energy, INC, Agreement, XEROHOME APP – Empowering Homeowners with Decarbonization Solutions, NTE $20,000
19) ADM Associates, Amendment, Evaluation, Measurement and Verification Services, expiration date extended to 12/31/21
20) NP Energy, LLC, Agreement, Management and Policy Consulting, NTE $130,000
21) NewGen Strategies & Solutions, Amendment, NTE $154,796 over two Fiscal Years
CEO Power Supply Agreements Executed

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These agreements are included in the Board packet as Appendix A.

Presentations & Relevant Meetings Attended by CEO
- Participated in CalCCA Monthly board, executive, and legislative meetings;
- Long-Duration Storage Super-JPA and RFO: Updates to various CCAs, CPUC, CAISO and legislative staff
- CC Power Board Meeting, June 16th, report included on the Consent Calendar
- Cupertino Rotary Club presentation, July 28th

Staff Presentations
- July 16th: Climate Emergency Building Decarbonization Summit; Energy Services Specialist Jessica Cornejo
- July 22nd: EV Software Charing and Platforms, hosted by REG; Director of Decarbonization and Grid Innovation Programs Aimee Bailey
- July 28th: SPUR Workshop, Manager of Energy Services Zoe Elizabeth

ATTACHMENTS
1. Comments on Clean Energy Investments Infrastructure Package
2. Decarb & Grid Innovation Programs Update, August 2021
3. Account Services & Community Relations Update, August 2021
4. Regulatory and Legislative Update, August 2021
5. Agenda Planning Document, August 2021– November 2021
6. SVCE Director Requests Update – August 2021
July 8, 2021

Re: Comments on Clean Energy Investments in Infrastructure Package

Dear Senators Feinstein and Padilla:

The Federal government is a key partner in advancing clean energy, and we are heartened to see a renewed focus on tackling climate change. On behalf of Central Coast Community Energy, Clean Power Alliance of Southern California, Marin Clean Energy, Silicon Valley Clean Energy, San Diego Community Power, and Sonoma Clean Power, we write to provide comments on the CLEAN Future Act and future Federal infrastructure legislation.

Inclusion of CCAs as Eligible Entities for Funding

Community Choice Aggregators (CCAs) are load serving entities that play an increasing role in advancing decarbonization. CCAs are public agencies formed by local communities with the mission to provide clean electricity and advance decarbonization and electrification. In California, CCAs serve more than 200 communities and more than 11 million customers. Many CCAs invest in decarbonization programs locally and regionally ranging from electric vehicle charging station installations in multi-family and small business applications to rebates for solar plus storage installations. Additional Federal funds can help us increase the reach of existing programs and create new ones. The CLEAN Future Act has a few exciting opportunities for grant programs, but unfortunately does not explicitly call out CCAs as an eligible entity like it does for investor owned and municipal utilities. Attachment A contains redline amendments to add CCAs as an eligible applicant for these programs.

Investment Tax Credits for Stand-alone Storage

Stand-alone storage technology is critical to our ability to store renewable energy and get to 24/7 clean energy. Legislation such as S. 1298 (Wyden), H.R. 848 (Thompson), and H.R. 1684 (Doyle)/S. 627 (Martin) would help provide tax credit support to develop and strengthen this technology.
Qualified Infrastructure Bonds for State and Local Governments

Our agencies support qualified infrastructure bonds that spur clean energy investments and technology. For example, American Infrastructure Bonds (AIBs) would be permanent ways for state and local governments to finance projects for which tax-exempt financing would otherwise be available. AIBs present an important opportunity to lower the cost of renewable electricity for millions of California consumers through prepayment transactions. Prepayment transactions allow tax-exempt electricity providers the ability to pay up-front for energy from solar, wind and other renewable resources and save 10% - 15% on energy costs. By lowering the cost of existing renewable energy, AIBs will free up resources to invest in new projects. AIBs would also reduce the cost of future projects, accelerating investment in the buildout of clean energy infrastructure, which will also create much-needed jobs. Currently, market conditions do not support the use of prepayment transactions using tax-exempt debt. Taxable AIBs would immediately make prepayment transactions possible.

Focus Limited Federal Funding on Hard to Serve Communities

We recognize that climate change is a big challenge and Federal funds are limited. The Federal government should focus its investments on the hardest-to-reach sectors and communities. For example, electric vehicle charger incentives should go to multi-family, affordable housing, and small business applications. We support the CLEAN Future Act’s focus on underserved communities for electric vehicle charger deployment. For electric vehicle incentives, we support electric vehicle purchase incentives at the point of sale. Point of sale incentives immediately bring down the cost of the vehicle and make the vehicle more affordable particularly for lower-income people. On building decarbonization efforts, any new federal funds should concentrate on retrofitting existing homes. In California, many communities are taking proactive steps on decarbonizing new construction. This new construction remains a small portion of the overall building stock, and the larger challenge will be retrofitting existing buildings, especially those where vulnerable communities live.

Increase Flexibility in Permitting and Non-financial Support

In some areas, the Federal government can help with permitting and other non-financial support including permitting for clean energy infrastructure. With these efforts the federal government can help reduce costs for our customers and speed up the transition to a low carbon electricity grid without a new outlay of precious tax dollars.

Thank you for considering our comments. We look forward to continuing to work
closely with you as conversations in DC progress.

Sincerely,

Tom Habashi  
CEO  
Central Coast Community Energy

Girish Balachandran  
CEO  
Silicon Valley Clean Energy

Ted Bardacke  
Executive Director  
Clean Power Alliance of Southern California

Bill Carnahan  
Interim CEO  
San Diego Community Power

Dawn Weisz  
CEO  
Marin Clean Energy

Geof Syphers  
CEO  
Sonoma Clean Power

cc: Congressional Delegation for Central Coast Community Energy, Clean Power Alliance of Southern California, Marin Clean Energy, Silicon Valley Clean Energy, San Diego Community Power, and Sonoma Clean Power
The following are sections where the CLEAN Act could be amended to clarify that Community Choice Aggregators (CCAs) are eligible funding recipients.

Sec. 241. DISTRIBUTED ENERGY RESOURCES, which directs the Secretary of Energy to establish a program to provide loans to eligible entities to support deployment of distributed energy systems.

“(v) an electric utility, including—

(I) a rural electric cooperative;

(II) a community choice aggregator;

(III) a municipally owned electric utility; and

(IV) an investor-owned utility.”

Sec. 440B. ELECTRIC VEHICLE CHARGING EQUITY PROGRAM. Directs the Secretary of Energy to establish a program to increase the deployment and accessibility of electric vehicle charging infrastructure in underserved or disadvantaged communities.

“(e) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—To be eligible for a grant or technical assistance under the EV Charging Equity Program, an entity shall be—

(A) an individual or household that is the owner of where a project will be carried out;

(B) a State, local, Tribal, or Territorial government, or an agency or department thereof;

(C) an electric utility, including—

(i) a municipally owned electric utility;

(ii) a community choice aggregator;

(iii) a publicly owned electric utility;

(iv) an investor-owned utility; and

(v) a rural electric cooperative...”
SVTEC Meeting
The June SVTEC meeting featured a panel discussion with CARB Chair Liane Randolph and CPUC Commissioner Cliff Rechtschaffen focused on how local action can support the success of the Governor’s Executive Order N-79-20 that bans the sale of new internal combustion passenger vehicles in California by 2035.

FutureFit Fundamentals
The FutureFit Fundamentals Contractor Training is currently open to the first round of contractors and participants to test course material. This online course provides a robust update of current all-electric building practices and is designed for qualified contractors, apprentices and journey people.

Community Advocate Meeting
On July 29, 2021, programs staff met with local community advocates to provide updates and solicit input on program initiatives. This quarterly meeting covered topics including building decarbonization, equity framework, accessible financing, FutureFit Fundamentals contractor training and opportunities for engagement.

Latest eHub Resilience Promotions
SVCE is offering customers $50 off portable power stations, evaporative coolers and air purifiers to help customers prepare for summer heat and potential power emergencies. Devices like evaporative coolers can provide relief on hot days to customers who may not have air conditioning.
Heat Pump Water Heater
Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters.

- **Cumulative HPWH Installations**
- **Cumulative Service Panel Upgrades**

Lights On Silicon Valley
Provide incentives for enrolling solar and battery systems in the SVCE grid services program.

- **Single-Family**
- **Multi-Family**

Funding: $1.15M
Goal: 220 HPWH by 2022

Funding: ≤ $7.4M
Goal: 750 Single-Family + 5 Multi-Family Projects Completed by 2023

COMING SOON!
CALeVIP

Provide incentives for electric vehicle (EV) chargers as part of a regional program

Funding: $11.58M
Goal: 1K Level 2 + 85 DC Fast Chargers by 2023

FutureFit Fundamentals

Provide financial relief to contractors by expanding their knowledge of electrification technologies

Funding: $1.5M
Goal: 150 Participants (Phase 1)
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<table>
<thead>
<tr>
<th>INNOVATION</th>
<th><strong>Active</strong></th>
<th><strong>In Development</strong></th>
<th><strong>Complete</strong></th>
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<tbody>
<tr>
<td>UtilityAPI</td>
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<td>EVmatch</td>
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<tr>
<td>Ecology Action</td>
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<tr>
<td>Extensible Energy / Community Energy Labs</td>
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<tr>
<td>ev.energy</td>
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<td>Span.IO</td>
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<td>Outthink</td>
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<td>Electron</td>
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<tr>
<td>Stanford</td>
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### 1. Outreach Events & Sponsorships

<table>
<thead>
<tr>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00 – 8:30 PM</td>
<td>SVCE is supporting and engaging in virtual events, meetings and conferences allowing us to continue sharing information and resources with the community and broader industry stakeholders.</td>
<td></td>
</tr>
<tr>
<td>11:30 AM – 1:00 PM</td>
<td>CalWORKs Advisory Council Meeting— presented on financial assistance programs</td>
<td></td>
</tr>
<tr>
<td>7:00 – 8:00 PM</td>
<td>Leading Youth For Ecology (LYFE) – presented</td>
<td></td>
</tr>
<tr>
<td>9:00 – 10:00 AM</td>
<td>SVLG Race to Net Zero: Energy &amp; Sustainability</td>
<td>Morgan Hill (sponsoring event program)</td>
</tr>
<tr>
<td>All day</td>
<td>Morgan Hill Freedom Fest— sponsor</td>
<td></td>
</tr>
</tbody>
</table>
1. Outreach Events & Sponsorships Continued

<table>
<thead>
<tr>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 20 6:30 - 7:45 PM</td>
<td>BayREN Home+ Mountain View – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>July 21 6:30 - 7:45 PM</td>
<td>BayREN Home+ Milpitas – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>August 4 6:00 - 7:15 PM</td>
<td>BayREN Home+ Los Altos – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>August 10 6:00 - 7:15 PM</td>
<td>BayREN Home+ Los Gatos – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>August 24 TBD</td>
<td>BoyREN BAMBE Multifamily – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>August 31 6:00 - 7:15 PM</td>
<td>BayREN Home+ Campbell – presentation</td>
<td>Virtual</td>
</tr>
</tbody>
</table>
2. Customer Participation

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>96.30%</td>
<td>96.31%</td>
</tr>
<tr>
<td>Commercial</td>
<td>96.33%</td>
<td></td>
</tr>
</tbody>
</table>
Member Agency Working Group July Update

- Media Updates and Flex Alert Check
- RMI’s CA Equitable Home Electrification Program
- 2021 Summer Readiness and Mid-Term Reliability Procurement
- Leaf Blower Promotion Follow-Up
- Community Energy Resiliency Update
$20,000 in scholarships awarded to local students in the EmPower Silicon Valley short film competition.

Winning categories included:

- Climate Impact
- Resilience Innovation
- Community Enthusiasm
- Creative Presentation

Watch the winning videos at: SVCleanEnergy.org/EmPower-SV
# Use Transition Update

## Time-of-Use Transition Update

In June 2021, PG&E and Silicon Valley Clean Energy customers not currently on a Time-of-Use rate plan were automatically transitioned to a Time-of-Use (peak pricing 4 p.m.-9 p.m. every day) rate.

<table>
<thead>
<tr>
<th>Use Rate Transition Population</th>
<th>Number of Customers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customers Transitioned</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declined Transition</td>
<td></td>
<td>21%</td>
</tr>
<tr>
<td>Ineligible</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. Flex Alert Communications

- Flex Alert Communications
- Email notification to city PIOs and staff with media kit
- Email notification to top customers
- Posts to Nextdoor
- More information at flexalert.org

Flex Alerts are voluntary calls for consumers to conserve electricity.

The California Independent System Operator calls these events when electricity demand is anticipated to reach available capacity.

During a Flex Alert, you should reduce your energy usage from 4 - 9 p.m.

More information at flexalert.org
7. Latest SVCE News

- Preparing for Summer 2021.
  News Post, 06-22-21

- $20,000 in Scholarships Awarded to Students in EmPower Silicon Valley Short Film Competition.
  Press Release, 07-08-21

- Community Energy Agencies Contract for 778 MW of Renewable Energy and 118.75 MW of Storage.
  Press Release, 07-19-21

- Community Choice Providers Form California Community Choice Financing Authority.
  Press Release, 07-29-21

View the Winning Youth Short Films
Opinion: Time-of-use electricity rates support clean, reliable grid. The Mercury News, 06-24-21

Clearway contracts with two California CCAs for 200-MW solar + storage project in Riverside County.

Solar Power World, 07-14-21


Central Coast energy provider bolsters its sources of power. Monterey Herald, 07-22-21

Two California community choice aggregators contract for renewable energy, energy storage. American Public Power Association, 07-22-21

EVmatch Awarded California Energy Commission Grant. Automoblog, 07-22-21

Two CCAs Ink Seven Power Contracts. California Energy Markets, 07-23-2021

Sunrun Works with CCAs to Build Neighborhood Microgrids in Northern California. MicrogridKnowledge, 07-26-21
- Students from Milpitas High School win Silicon Valley Clean Energy film competition.

- Two California aggregators sign joint contracts for 778 MW of energy generation.

- California Community Choice Aggregators sign contracts for 778 MW of renewables and 118.75 MW of storage.

- Joint procurement push sees two California CCAs sign for 778 MW of solar with 119 MW of energy storage.
SVCE Legislative and Regulatory Update
Policy Updates

Legislative Update:
1. SB 612 Update
2. State Budget Investments in Clean Energy

Regulatory Update:
1. Power Charge Indifference Adjustment (PCIA)
2. Integrated Resource Planning (IRP)
3. Resource Adequacy (RA)
4. Direct Access (DA)
5. Debt Relief
6. Renewables Portfolio Standard (RPS)
PCIA: CPUC adopts new rules that don’t go as far as

The Power Charge Indifference Adjustment (PCIA) is the CPUC-authorized mechanism for PG&E to recover uneconomic or legacy procurement costs via a fee that is charged to CCA customers.

- Does not allow for legacy resource allocations (GHG, RA), that help reduce the PCIA, beyond 2023.
- Authorizes RPS resource allocations beginning in 2023.
- Approves a process for increasing transparency of investor-owned utilities' RA resources.
- Removes the "cap" and "trigger" mechanism which addresses the PCIA's uncollected balances and should help reduce volatility in PCIA rates.

Next Steps:
SVCE staff is currently engaged in the current PCIA forecast proceeding in coordination with CaICCA and other CCAs.
Integrate Resource Planning (IRP) is a two-year process to ensure that the electricity sector is on track to meet its portion of the State’s GHG reduction and reliability goals.

- Sets a new target of 1,000 MW of "long-lead time" or "LLT" long-duration storage and 1,000 MW of LLT zero-emission generation resources.
- Projects must be online by June 2026.
- The decision does not order any procurement for new fossil-based resources and defers consideration of these resources in future IRP proceedings.

### Proposed SVCE Midterm Procurement Obligations

<table>
<thead>
<tr>
<th>Year</th>
<th>Obligations</th>
<th>(LLT resources)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2023</td>
<td></td>
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<td>2024</td>
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<td>2025</td>
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<tr>
<td>2026</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
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</tbody>
</table>
RA: CPUC proposes new rules to RA program

Resource Adequacy (RA) is a program developed to ensure that there will be sufficient resources available to serve electric demand under most conditions.

- Adopts increasing penalties for repeated RA non-compliance.
- Adopts changes to requirements to ensure greater reliability.
- June 2021: CPUC adopts a decision modifying RA rules, which:
- Adopts a process and schedule for developing a final restructuring proposal.
- Orders a series of workshops over the next six months that will inform the final restructuring proposal.

Next steps:
SVCE staff will coordinate with CaICCA on workshop participation and proposal development.
Direct Access (DA) allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

- Present an unacceptable risk to long-term reliability
- Inhibit the state's greenhouse gas reduction goals
- Recommendations were submitted to the Legislature

The Legislature has not acted on the CPUC recommendations at this time.

Next steps:
- Implementation of Senate Bill 237 is complete
- Staff is monitoring any future action by the Legislature.
Debt Relief: CPUC establishes payment plans for customers with bill debt

The CPUC opened a new proceeding to consider accumulated bill debt due to the pandemic.

- Debt Relief: CPUC establishes payment plans for customers with bill debt
- The CPUC opened a new proceeding to consider accumulated bill debt due to the pandemic.
- New rules established for debt relief:
  - June 2021: CPUC established new payment plans for utility customers with accumulated bill debt, which:
    - Extends the disconnection moratorium through September 30, 2021.
    - Automatically enrolls residential customers with 60+ days past due bill into 24-month payment plans.
    - Enrolls small business customers in longer payment terms so that the customer debt is no more than 10% of average bill.
    - Engages community-based organizations to provide payment plan support.

Next Steps:
- Staff recommendation to extend re-instatement of SVCE's Delinquent Payment policy through November 2021 is on the current SVCE Board meeting agenda.

Reg/Leg Update, August 2021
The Renewables Portfolio Standard (RPS) requires 60% of electrical sales by CCAs and IOUs to be served by renewable energy by 2030 and requires all the state’s electricity to come from carbon-free resources by 2045.

**2021 RPS Procurement Plan**

- July 2021: SVCE filed its draft plan

**Next Steps:**
- CPUC will review the plans and issue a proposed decision on the plans by the end of the year.
Legislative Update
SB 612 (Portantino) is now a 2-year bill.

Ratepayer Equity bill stalled in Energy Committee.

Bill passed Senate (33 yes, 6 no, 1 not voting).

Entire SVCE Senate delegation supported the bill. Entire Assembly delegation were co-authors.

More than 100 organizations supported the bill. Includes business, environmental justice, environmental, and local government organizations.

Bill formally opposed by TURN, SCE, and PG&E who raised that the CPUC already decided the issue.

Assembly Energy Committee Chair decided not to set the bill for a hearing.

Thank you to the Board for member agency support and direct advocacy with state legislators!
State Budget Includes Investments in Clean Energy and COVID Utility Support

Some details still to be determined through Budget Trailer Bills

<table>
<thead>
<tr>
<th>Program</th>
<th>Funding in FY 21-22</th>
</tr>
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<tbody>
<tr>
<td>Unpaid Electric Utility Bill Support</td>
<td>$1 billion</td>
</tr>
<tr>
<td>Offshore Wind, Pre-commercial long duration storage projects</td>
<td></td>
</tr>
<tr>
<td>Climate Resilience—specific projects and programs</td>
<td>$1.2 billion</td>
</tr>
<tr>
<td>Clean Car 4 All, Clean Vehicle Rebate, electric bikes, ZEV transit,</td>
<td></td>
</tr>
<tr>
<td>market development, manufacturing, and heavy-</td>
<td></td>
</tr>
<tr>
<td>- ZEV and infrastructure</td>
<td>$2.7 billion</td>
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</tbody>
</table>
Federal Infrastructure Proposal Still Under Negotiation

SVCE and 5 CCAs sent joint letter on priorities. Letter was well-received.
<table>
<thead>
<tr>
<th>AUGUST 2021</th>
<th>SEPTEMBER 2021</th>
<th>OCTOBER 2021</th>
<th>NOVEMBER 2021</th>
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<tr>
<td>Board of Directors, August 11:</td>
<td>Board of Directors, September 8:</td>
<td>Board of Directors, October 13:</td>
<td>Board of Directors, November 10:</td>
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<tr>
<td></td>
<td>Consent:</td>
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<td></td>
<td>Minutes</td>
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<td></td>
<td>Camus Energy Agreement</td>
<td>Regular Calendar</td>
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<td>Attestation of Power Content Label</td>
<td>LDS Agreement</td>
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<td>Ascend, F&amp;A agreements</td>
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<td>Ascend, F&amp;A agreements</td>
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<td></td>
<td>Coordinated Operating Agreement, 3CE</td>
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<td>Coordinated Operating Agreement, 3CE</td>
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<td>Regular Calendar</td>
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<td>Regular Calendar</td>
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<tr>
<td></td>
<td>Adopt Strategic Plan</td>
<td></td>
<td>Adopt Strategic Plan</td>
</tr>
<tr>
<td></td>
<td>Adopt 2022 Budget</td>
<td></td>
<td>Adopt 2022 Budget</td>
</tr>
<tr>
<td>Executive Committee, August 27:</td>
<td>Executive Committee, September 24:</td>
<td>Executive Committee, October 22:</td>
<td>Executive Committee, November 17:</td>
</tr>
<tr>
<td>Supplier Diversity and Equity Timeline</td>
<td>Policy Approvals (ie Purchasing Card)</td>
<td>Reach Codes 2022 - Tentative</td>
<td>Power Supply Update</td>
</tr>
<tr>
<td></td>
<td>Energy Risk Management Policy Update</td>
<td>Prepay Update</td>
<td></td>
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<tr>
<td></td>
<td>Prepay Update</td>
<td></td>
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<tr>
<td>Finance &amp; Administration Committee, August 2:</td>
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<tr>
<td>Audit Committee, August 18:</td>
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<tr>
<td>Audit Kick-off</td>
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<tr>
<td>IT Audit Update</td>
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</tr>
<tr>
<td>Date</td>
<td>Meeting Where Requested</td>
<td>Request/Comment</td>
<td>Comments for Board Report</td>
</tr>
<tr>
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<td>---------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6/9/2021</td>
<td>Board Meeting</td>
<td>Staff to perform a deep dive into other CCA CEO authority re: staffing (Vice Chair Gibbons)</td>
<td>Staff has incorporated their research into a draft Chief Personnel Officer resolution which will be up for consideration with approval of the FY 2021-22 Budget</td>
</tr>
<tr>
<td>6/9/2021</td>
<td>Board Meeting</td>
<td>Staff to perform a deep dive into employee turnover (Dir. Fligor)</td>
<td>Staff has worked with SVCE’s HR consultant to review data received from employee exit interviews</td>
</tr>
<tr>
<td>5/12/2021</td>
<td>Board Meeting</td>
<td>Training request on how to manage a potential new working environment and check-in 6 months to 1 yr after implementation of a possible hybrid work structure</td>
<td>Staff will keep this in mind as a policy is developed</td>
</tr>
<tr>
<td>5/12/2021</td>
<td>Board Meeting</td>
<td>Request for variance percentage of retail load forecast from the state in comparison to SVCE’s actuals (Dir. Ellahie)</td>
<td>Staff has reached out to Director Ellahie regarding his questions</td>
</tr>
<tr>
<td>5/12/2021</td>
<td>Board Meeting</td>
<td>Consideration of 2022 building code cycle/reach codes (Chair Abe-Koga)</td>
<td>Staff is in the process of planning for 2022 Reach Codes</td>
</tr>
<tr>
<td>3/26/2021</td>
<td>Executive Committee</td>
<td>American Rescue Plan: Is there anything that could apply to SVCE re: customer debt? If so, SVCE to send a letter to member agencies requesting they consider SVCE for funds to assist with customer debt.</td>
<td>Staff is looking into the request</td>
</tr>
<tr>
<td>3/3/2021</td>
<td>Audit Committee</td>
<td>SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)</td>
<td>Staff will consider this when looking at overall risk mitigation</td>
</tr>
<tr>
<td>8/28/2020</td>
<td>Executive Committee</td>
<td>Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)</td>
<td>Purchasing Policy does not currently have a formal duration limit; will update Purchasing policy pending discussion with new CFO</td>
</tr>
</tbody>
</table>
Staff Report – Item 3

Item 3: Adopt Resolution Authorizing the Chief Executive Officer to Execute the Power Supply Contract with the California Community Choice Financing Authority and Related Supporting Agreements

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services

Date: 8/11/2021

RECOMMENDATION

Staff recommends that the Board of Directors adopt Resolution 2021-20 authorizing the CEO to execute the Power Supply Contract with the California Community Choice Financing Authority (CCCFA) and related supporting agreements referenced in this report to enable SVCE to enter into a 30-year energy prepayment transaction.

The Board’s authorization will be subject to the following parameters.

1. The Bonds, issued by CCCFA, will not be guaranteed obligations of SVCE, but will be limited obligations of CCCFA payable solely from the revenues and other amounts pledged therefor under the Indenture as the Trust Estate, including amounts payable by SVCE under the Power Supply Contract.
2. The aggregate principal amount of the Bonds shall not exceed $1,250,000,000.
3. The energy savings to SVCE under the Power Supply Contract shall be at least $3.00 per MWh for the initial term of the bonds.

FINANCE AND ADMINISTRATION COMMITTEE REVIEW

At its meeting on August 2, 2021, the Finance and Administration Committee reviewed the power prepayment transaction and the related set of documents. The Finance and Administration Committee voted to recommend that the Board grant the necessary approvals for SVCE to enter into a 30-year energy prepayment transaction.

BACKGROUND

The following timeline displays the progress of energy prepayment developments at SVCE.
As shown in the timeline above, SVCE working jointly with East Bay Community Energy (EBCE), has been evaluating and working on an energy prepayment transaction since June 2019 and has made several presentations to the Board and the Finance and Administration Committee and the Executive Committee. In October of 2020, the Board authorized the CEO to enter into legal service agreements with several firms to guide, negotiate, and finalize the prepayment transaction. In April of 2021, the Board authorized SVCE to join the California Community Choice Financing Authority (CCCFA) as one of its founding members. As explained in the next section, CCCFA is the entity that will issue the tax-exempt bonds.

The goal of the prepayment transaction is to reduce the cost of power purchases on quantities delivered under the prepay structure with minimal risk to SVCE. As explained in detail in the next section, the prepay structure enables publicly owned utilities including CCAs to reduce their energy costs by financing the acquisition of long-term prepaid energy supplies with tax-exempt bonds.

Prepayment transactions have been used since the 1990s for natural gas transactions. Over 90 municipal prepayment transactions totaling over $50 billion have been completed in the US, with over 95% of them for natural gas.

Prepayment transactions are codified in the US Tax law, and Congress enacted legislation specifically allowing for such transactions as part of the National Energy Policy Act of 2005.

As summarized in the table below, SVCE and EBCE has been working with a seasoned team of professionals to negotiate and structure the transaction.
STRATEGIC PLAN
Entering into a Prepayment transaction will further Goals #5, #6, and #13 of the SVCE Strategic Plan.
Goal #5: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner.
Goal #6: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.
Goal #13: Commit to maintaining a strong financial position.

ANALYSIS & DISCUSSION
Review of the Structural Overview of Power Prepay

SVCE has Power Purchase Agreements (PPA) and other carbon free energy transactions with an existing counterparty (Energy Supplier). The Energy Supplier provides energy and any associated renewable/carbon...
free credits (environmental credits) to SVCE, and SVCE pays the Energy Supplier the contract price. Under the prepayment structure:

1. SVCE assigns its rights to energy under the energy contract equivalent to the prepaid quantity to Morgan Stanley at the full contract price. Now, the Energy Supplier will provide such energy and any associated environmental credits to Morgan Stanley, and Morgan Stanley will pay the contract price to the Energy Supplier.

2. SVCE, along with other founding member CCAs\(^1\), created the California Community Choice Financing Authority, a separate legal entity that can issue tax-exempt municipal bonds.

3. CCCFA issues non-recourse tax-exempt bonds that are secured by the contractual rights and transaction cashflows pursuant to a Trust Indenture. The bonds are not secured or guaranteed by SVCE or CCCFA. Based on the contractual agreements securing the bonds, the bonds will carry the credit ratings of Morgan Stanley.

4. CCCFA uses the proceeds from the bonds, net of all prepay transactions fees, and pays Morgan Stanley the present value of the cost of energy and any environmental credits that Morgan Stanley will deliver to CCCFA over the 30-year term of the transaction under a prepaid power agreement.

5. SVCE and CCCFA execute a power supply agreement. Under this agreement, SVCE pays CCCFA the initial contract price less a discount as the CCCFA delivers to SVCE the energy and environmental credits that it receives from Morgan Stanley.

6. CCCFA uses payments received from SVCE to pay interest and principal payments to the Bond holders.

Under the prepayment structure, SVCE receives the same energy and environmental credits from the Energy Supplier (although indirectly via Morgan Stanley and then CCCFA) but for a lower price. The source of the savings or lower price is primarily the difference between taxable and tax-exempt debt interest rates. Morgan Stanley’s capital needs are funded by a variety of means in taxable corporate markets, which have higher interest rates than tax-exempt debt. As a public agency, CCCFA can issue tax-exempt debt. When CCCFA provides the prepayment to Morgan Stanley for energy that Morgan Stanley will deliver over the term of the transaction, Morgan Stanley is effectively raising capital at a lower cost. In return, on a negotiated basis, Morgan Stanley flows the savings to SVCE by lowering the price SVCE pays for the energy and any environmental credits. By using this prepayment structure, SVCE expects to reduce the cost of energy purchases that are delivered under this structure by about $1.3 million or more per year for the initial term of the bonds.

The bonds initial term is expected to be about 5-10 years, and SVCE will not execute the transactions unless at a minimum we can receive $3/MWh savings. At the end of the initial term, the bonds will be refinanced, and the terms of the discount will be set per the attached Repricing Agreement, which will also specify a minimum discount threshold of $2/MWh.

The risks to SVCE are minimal as the debt will not be recourse to SVCE, and if for any reason the structure falls apart, the original energy contract will revert to SVCE and the loss to SVCE will be the staff time invested in the project and the future savings expected to be generated by the prepayment transaction. The initial consultant and attorney fees are all contingent upon execution of the transaction and will be financed from the bond proceeds. These fees, excluding underwriting fees, are estimated to about $1.4 million between both SVCE and EBCE.

**SUMMARY OF THE TRANSACTION DOCUMENTS**

These are the agreements that SVCE will sign once the Board authorized parameters are met:

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\(^1\)SVCE along with Central Coast Community Energy (3CE), East Bay Community Energy (EBCE), and Marin Clean Energy (MCE) are the founding members of the CCCFA.
Power Supply Contract – The agreement is between SVCE and CCCFA, and it provides for the sale of clean energy from CCCFA to SVCE for the term of the prepayment.

Letter Agreement Regarding PPA Assignments – The agreement is between SVCE, CCCFA, and Morgan Stanley, and it details the terms of assigning PPAs that SVCE has with a current or future energy supplier.

Form of Limited Assignment Agreement – This agreement is between SVCE, Morgan Stanley, and the third-party energy supplier, and it details the terms of partially assigning SVCE’s energy contracts to Morgan Stanley.

Project Administration Agreement – This agreement is between SVCE, EBCE, and CCCFA. The agreement sets the terms for coordination between the two CCAs (SVCE and EBCE) and the terms for SVCE and EBCE to act on behalf of the issuer such as scheduling for the energy.

Energy Supply/PPA Custodial Agreement – This agreement is between SVCE, Morgan Stanley and the Custodian Bank on handling cashflows among the parties and making the required payments to the energy/PPA supplier.

The following are the major agreements of the prepayment transaction that CCCFA will sign:

Prepaid Agreement – This agreement is between CCCFA and Morgan Stanley and it details the terms of prepayment by CCCFA to Morgan Stanley and the flow of energy from Morgan Stanley to CCCFA. The terms of this agreement largely mirror those of the Power Supply Contract between SVCE and CCCFA.

Trust Indenture – This agreement is between CCCFA and the Trustee and sets forth the terms of bond issuance, the rights of bondholders, and secures the cashflows of CCCFA to ensure principal and interest payments to the bondholders.

Re-pricing agreement – The agreement is between CCCFA and Morgan Stanley and sets the terms for remarketing and repricing of bonds at future bond repricing periods and the terms for calculation of future energy price discount that will be offered to SVCE.

Also attached is the Preliminary Offering Statement (POS) that will be used to market the bonds and provides information on the energy prepayment transaction including the key terms, and Appendix A of this document includes background information on SVCE including formation of SVCE, service area, customers, sources of clean energy, and other information to inform bond holders on the financial and operational strength of the organization.

Also associated with the transaction are commodity swap agreements (not included in the package) and related custodial agreements which convert the fixed price prepayment to a variable priced index. There are two agreements: one agreement between the Commodity Swap Counterparty and CCCFA and another between the same Commodity Swap Counterparty and Morgan Stanley. Both swaps function such that if payment from SVCE and/or EBCE is index based (variable payment) the agreement will swap the index payment with Morgan Stanley for a fixed price (agreed upon execution of the transaction based on expectations regarding future market prices) such that CCCFA always ends up receiving its fixed payments. Even if SVCE made index payments, the net payment, after the settlement terms of the Energy Supply/PPA Custodial agreement are applied, will convert to the same fixed price that was originally owed to the Energy Supplier less the discount. The terms of these are such that if there is a default on either agreement both agreements terminate as will the prepayment transaction as a whole.

**FISCAL IMPACT**
The proposed prepayment transaction will save SVCE about $1.3 million or more per year during the initial term of the bonds.
ATTACHMENTS
1. Resolution 2021-20 Authorizing the Execution and Delivery of a Power Supply Contract and Certain Other Documents in Connection with the Issuance of the CCCFA Clean Energy Project Revenue Bonds, Series 2021B; and Certain Other Actions in Connection Therewith
2. Power Supply Contract
3. Letter Agreement Regarding PPA Assignments
4. Limited Assignment Agreement
5. Project Administration Agreement
6. Energy/Supply PPA Payments Custodial Agreement
7. Prepaid Agreement
8. Trust Indenture
9. Repricing Agreement
10. Preliminary Offering Statement
RESOLUTION 2021-20

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS, SERIES 2021B; AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, The Silicon Valley Clean Energy Authority (“SVCE”) was formed as a community choice aggregation agency (“CCA”) on March 31, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq. (the “Act”), among the City of Campbell, City of Cupertino, City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga and City of Sunnyvale, to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The city of Milpitas, located in Santa Clara County, was added as a member of SVCE and a party to the JPA in June 2018;

WHEREAS, pursuant to the provisions of the Act, SVCE and certain other California “community choice aggregators” entered into a joint powers agreement (the “Joint Powers Agreement”) pursuant to which the California Community Choice Financing Authority (the “Issuer”) was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist SVCE in financing the acquisition of supplies of clean energy;

WHEREAS, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy by any means and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

WHEREAS, SVCE has determined that it is desireable to acquire a long-term supply of clean energy from the Issuer;

WHEREAS, SVCE is requesting that the Issuer agree to purchase certain quantities of clean energy from Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the “Prepaid Supplier”) on a prepaid basis (the “Project”) and to sell such clean energy to SVCE, as described herein;

WHEREAS, SVCE is requesting that the Issuer finance the costs of the Project with the proceeds of its Clean Energy Project Revenue Bonds, Series 2021B (the “Bonds”);
WHEREAS, SVCE has determined to authorize the officers of SVCE to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

WHEREAS, there have been made available to the Board of Directors of SVCE for approval forms of the following agreements to which SVCE is a party (collectively, the “SVCE Documents”):

1. Power Supply Contract between SVCE and the Issuer;

2. Custodial Agreement by and among SVCE, Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), the Prepaid Supplier, and the custodian to be named therein;

3. Form of Limited Assignment Agreement, by and among SVCE, the counterparty to the power purchase agreement described therein, and MSCG;

4. Letter Agreement among SVCE, the Prepaid Supplier and MSCG regarding matters relating to Assignment Agreements; and

5. Prepaid Energy Project Administration Agreement, by and among SVCE, East Bay Community Energy Authority and the Issuer; and

WHEREAS, there have also been made available to the Board of Directors of SVCE forms of the following additional documents relating to the Project:

1. Trust Indenture (the “Indenture”) between the Issuer and the trustee to be named therein, providing for, among other things, the issuance of and security for the Bonds;

2. Prepaid Energy Sales Agreement (the “Prepaid Agreement”) between the Issuer and the Prepaid Supplier, providing for the delivery of the prepaid energy supply to the Issuer;

3. Re-pricing Agreement (the “Re-pricing Agreement”) between the Issuer and the Prepaid Supplier providing for the remarketing or refunding of the Bonds from time to time and the establishment of the Monthly Discount available to SVCE under the Power Supply Agreement from time to time during the term of the transaction; and

4. Preliminary Official Statement (the “Preliminary Official Statement”), to be used in connection with the offering and sale of the Bonds, including the information relating to SVCE included in Appendix A thereto (the Indenture, the Prepaid Agreement, the Re-pricing Agreement and the Preliminary Official Statement, together with the SVCE Documents, the “Project Documents”);
NOW THEREFORE, BE IT RESOLVED by the SVCE Board of Directors, as follows:

Section 1. The proposed forms of the SVCE Documents, as made available to the Board of Directors for this meeting, are hereby approved. The form of Limited Assignment Agreement may be used, in substantially the same form, for the initial assignments of SVCE power purchase agreements, and in a similar form for additional power purchase agreements as needed to maintain the transactions approved hereby, with such changes as may be necessary to conform to the requirements of such power purchase agreement or as may be necessary to effect such assignment, and any such Limited Assignment Agreements shall be included in the SVCE Documents hereby approved. Subject to the parameters set forth in Section 4 of this Resolution the Chief Executive Officer is hereby authorized and directed, for and on behalf of SVCE, to execute and deliver the SVCE Documents in substantially said form, with such changes and insertions therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The proposed form of the Preliminary Official Statement, as made available to the Board of Directors for this meeting, is hereby approved. Any Authorized Officer is hereby authorized and directed, for and on behalf of SVCE, to execute and deliver a certificate as to the information regarding SVCE contained therein and in the final version of the Official Statement, with such changes and insertions therein as the Authorized Officer approving the same may deem necessary or appropriate. Subject to approval by the Issuer, SVCE hereby authorizes the distribution of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds, and the delivery of the Official Statement in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

Section 3. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of SVCE, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in the discretion of such Authorized Officers, to effectuate the actions which SVCE has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by SVCE the transactions contemplated by the SVCE Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 4. The approvals provided for herein shall be subject to the following parameters:
(a) the Bonds will not be obligations of SVCE, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by SVCE under the Power Supply Contract;

(b) the aggregate principal amount of the Bonds shall not exceed $1,250,000,000; and

(c) the annual energy savings to SVCE under the Power Supply Contract shall be at least $3.00 per MWh.

Section 5. Execution and delivery of the SVCE Documents by an Authorized Officer or Officers shall be conclusive evidence that the parameters set forth in Section 4 have been met, and all actions heretofore taken by the Authorized Officers with respect to the issuance of the Bonds are hereby ratified, confirmed and approved.

Section 6. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to professionals that provided services to SVCE in connection with the Project. These professional services include legal counsel, bond counsel, tax counsel, Municipal Financial Advisor, Swap Advisor, and any other consultant needed to complete the transactions contemplated herein for SVCE. Payment to these professionals will be made from the proceeds of the sale of the Bonds and pursuant to the terms of the applicable agreement executed with SVCE.

Section 7. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to additional vendors and/or parties to the SVCE Documents or other Project Documents to complete the issuance of the Bonds. These vendors, if any, will be paid pursuant to an agreement for services rendered in completing the issuance of the Bonds and from the proceeds of the sale of the Bonds.

Section 8. This Resolution shall take effect immediately.
ADOPTED AND APPROVED at a regular meeting of the SVCE Board of Directors on this 11th day of August, 2021 by the following vote:

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______________________________________
Margaret Abe-Koga, Chair

Attest:

______________________________________
Andrea Pizano, Clerk of the Board
POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

[CCA]

Dated as of [____], 2021
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**Exhibits**

- Exhibit A-1 - Base Energy Hourly Quantities
- Exhibit A-2 - EPS Energy Period Monthly Quantity
- Exhibit A-3 - Day-Ahead Average Price Weighting
- Exhibit B - Notices
- Exhibit C - Form of Remarketing Election Notice
- Exhibit D - Form of Federal Tax Certificate
- Exhibit E - Form of Opinion of Counsel to Purchaser
- Exhibit F - Monthly Discount
- Exhibit G - Form of Closing Certificate
- Exhibit H - Form of Remediation Certificate
POWER SUPPLY CONTRACT

This Power Supply Contract (hereinafter “Agreement”) is made and entered into as of [____], 2021 (the “Execution Date”), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and [Participant], a community choice aggregator organized under the Laws of the State of California (“Purchaser”).

W I T N E S S E T H:

WHEREAS, Issuer has planned and developed a project to acquire long-term Energy supplies from Morgan Stanley Energy Structuring, L.L.C. (“MSES”) pursuant to a Prepaid Energy Sales Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “Prepaid Agreement”) to meet a portion of the Energy supply requirements of Purchaser through an energy prepayment project (the “Energy Project”); and

WHEREAS, Issuer will finance the prepayment under the Prepaid Agreement, and the other costs of, the Energy Project by issuing the Bonds; and

WHEREAS, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code with authority to sell electricity to retail electric consumers within its service area; and

WHEREAS, Purchaser is agreeable to purchasing a portion of its Energy requirements from Issuer under the terms and conditions set forth in this Agreement and Issuer is agreeable to selling to Purchaser such supplies of Energy under the terms and conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser has assigned to [MSCG]/[MSES] certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be delivered to Issuer under the Prepaid Agreement and then resold by Issuer hereunder; and

WHEREAS, as a condition precedent to the effectiveness of the Parties’ obligations under this Agreement, Issuer shall have entered into the Prepaid Agreement and shall have issued the Bonds.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency
of which are hereby acknowledged, Issuer and Purchaser (the “Parties” hereto; each is a “Party”) agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“Affiliate” means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, “control” of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

“Agreement” has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

“Annual Refund” means the annual refund, if any, provided to Purchaser and calculated pursuant to the procedures specified in Section 3.2(c).

“Applicable Rating Agencies” means, at any given time, each Rating Agency then rating the Bonds.

“Assigned Delivery Point” has the meaning specified in the applicable Assignment Agreement.

“Assigned Energy” has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

“Assigned Fixed Price” means $[___]/MWh.

“Assigned Product” means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

“Assigned RECs” means any RECs to be delivered to MSCG or MSES pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” means a portion of Purchaser’s rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.
“Assignment Agreement” means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

“Assignment Letter Agreement” means that certain Letter Agreement, dated as of the date hereof, by and among MSCI, MSES, Issuer and Purchaser.

“Available Discount” means, for each Reset Period, the amount, expressed in cents per MWh (rounded down to the nearest one-half cent), determined by the Calculation Agent pursuant to the Re-Pricing Agreement for such Reset Period. The Available Discount shall equal the sum of the Monthly Discount and any anticipated Annual Refunds for the applicable Reset Period.

“Balancing Authority” has the meaning specified in the CAISO Tariff.


“Billing Date” has the meaning specified in Section 14.1(b).

“Billing Statement” has the meaning specified in Section 14.1(b).

“Bond Closing Date” means the first date on which the Bonds are issued pursuant to the Bond Indenture.

“Bond Indenture” means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Issuer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Issuer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

“Bonds” means the bonds issued pursuant to the Bond Indenture.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

“CAISO” means California Independent System Operator or its successor.

“CAISO Tariff” means CAISO’s FERC-approved tariff, as modified, amended or supplemented from time to time.

[“Calculation Agent” has the meaning specified in the Re-Pricing Agreement.]

“California Long-Term Contracting Requirements” means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB
“CCA Revenues” means all charges received for, and all other income and receipts derived by Purchaser from, the operation of its CCA System, including income derived from the sale of electric energy by its CCA System.

“CCA System” means Purchaser’s community choice aggregation program that provides electric energy supply service to retail customers located with its service area.

“Claiming Party” has the meaning specified in Section 11.1.

“Claims” means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.


“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

“Contract Price” has the meaning specified in Section 3.2(a).

“Contract Quantity” means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in Exhibit A-2 for such Month and (ii) the Hourly Quantity of Base Energy set forth in Exhibit A-1 for such Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.

“Day-Ahead Average Price” means, for any Assigned Energy after the Initial EPS Energy Period, the weighted average Day-Ahead Market Price for each Month during the applicable EPS Energy Period, with such weighted average calculated in accordance with the weighting set forth in Exhibit A-3; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh.

“Day-Ahead Market Price” means The Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Day-Ahead Market Price hereunder be less than $0.00/MWh.
“Default Rate” means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the “Money Rates” section as the “Prime Rate” for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

“Delivery Hours” means each Hour beginning at [___] CPT on the first day of the Delivery Period and ending at the end of the last Hour in the Delivery Period.

“Delivery Period” means the period beginning on [____], 2021 and ending on [____], 20[____]; provided that the Delivery Period shall end immediately upon the effective termination date of the Prepaid Agreement or early termination of this Agreement pursuant to Article XVII hereof.

“Delivery Point” means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

“Energy Delivery Point” has the meaning specified in Exhibit A-1.

“Energy Project” has the meaning specified in the recitals.

“EPS” means California’s Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“EPS Compliant Energy” means Energy that Purchaser can contract for and purchase in compliance with EPS requirements that are applicable to Purchaser.

“EPS Energy Period” means the Initial EPS Energy Period and any subsequent EPS Energy Period established by a future assignment of a power purchase agreement consistent with the Assignment Letter Agreement.

“Execution Date” has the meaning specified in the preamble.

“Federal Tax Certificate” means the executed Federal Tax Certificate delivered by Purchaser in the form attached as Exhibit D.

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Firm (LD)” means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability
only to the extent that, and for the period during which, such performance is prevented by Force Majeure.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Purchaser’s markets; (ii) Purchaser’s inability economically to use or resell the Energy purchased hereunder; (iii) the loss or failure of Issuer’s supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Issuer’s ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (b) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) any invocation of Force Majeure by MSES under the Prepaid Agreement shall constitute Force Majeure in respect of Issuer hereunder; (II) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of Issuer hereunder; and (III) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Issuer until the earlier of (A) the commencement of an “Assignment Period” under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

“Government Agency” means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

“Hour” means each 60-minute period commencing at [___] CPT during the Delivery Period. The term “Hourly” shall be construed accordingly.

“Hourly Quantity” means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

“Initial Assigned PPA” means that certain [Power Supply Agreement], dated as of [_____], between the Initial PPA Supplier and Purchaser. [NOTE: This definition and others
relating to the initial PPA assignment will be changed to plural to the extent that there are multiple PPA assignments at the outset.]

“Initial Assignment Agreement” means that certain Partial Assignment Agreement, dated as of the date hereof, by and among Purchaser, [MSES/MSCG]¹ and the Initial PPA Supplier.

“Initial EPS Energy Period” means the [“Assignment Period”] as defined in the Initial Assignment Agreement.

“Initial PPA Supplier” means [____].

“Initial Reset Period” means the period beginning on [____], 2021 and ending on [____], 20[____].

[“Interest Rate Period” has the meaning specified in the Bond Indenture.]

“Issuer” has the meaning specified in the preamble.

“Issuer Default” has the meaning specified in Section 17.1.

“Law” means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

“Long-Term PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, MSES or any successors thereto pursuant to any Assigned Rights and Obligations.

“Minimum Discount” means [____] cents per MWh for the Initial Rate Period and thereafter no less than [____] cents per MWh. Both amounts are inclusive of any projected Annual Refund.

“Month” means, during the Delivery Period, a calendar month. The term “Monthly” shall be construed accordingly.

“Monthly Discount” means (i) for the Initial Reset Period, an amount (when taken together with any Annual Refund) that is not less than the Minimum Discount and is specified in Exhibit F, which Exhibit F shall be provided by Issuer to Purchaser on the Bond Closing Date, and (ii) for each subsequent Reset Period, a portion of the Available Discount for such Reset Period determined by the Calculation Agent pursuant to the Re-Pricing Agreement and set forth in an updated Exhibit F provided by Issuer after such determination.

¹ NTD: MSES will be party to the assignment agreement if MSCG is the Initial PPA Supplier, but MSCG will be party to the assignment agreement to the extent the Initial PPA Supplier is an unrelated third party.
“Monthly Quantity” means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

“MSCG” means Morgan Stanley Capital Group Inc., a Delaware corporation.

“MSES” has the meaning specified in the recitals.

“Municipal Utility” means any Person that (a)(i) is a “governmental person” as defined in the implementing regulations under Section 141 of the Code and any successor provision and owns a natural gas or electric distribution utility (or provides Energy at wholesale to, or that is sold to entities that provide natural gas or Energy at wholesale to, governmental Persons that own such utilities) or (ii) is a community choice aggregator organized under the Laws of the State of California, and (b) agrees in writing to use the Energy purchased by it (or cause such as to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

“MWh” means megawatt-hour.

“Non-Priority Energy” means Energy that is not Priority Energy.

“Party” has the meaning specified in the recitals.

“PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, MSES or any successors thereto pursuant to any Assigned Rights and Obligations.

“Person” means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

“Portfolio Content Category 1” means any Renewable Energy Credit associated with the generation of electricity from an “Eligible Renewable Energy Resource” consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Potential Remarketing Event” has the meaning specified in Section 3.4(b).

“PPA Supplier” means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the terms of the Assignment Letter Agreement.

“PPT” means Pacific Daylight Time when such time is applicable and otherwise means Pacific Standard Time.

“Prepaid Administrative Fee” means $[0.50] per MWh.

“Prepaid Agreement” has the meaning specified in the recitals.
“Priority Energy” means the Contract Quantity to be purchased by Purchaser under this Agreement, together with Energy that Purchaser is obligated to take under a long-term agreement, which Energy either (i) has been purchased by Purchaser or a joint action agency in a prepayment transaction using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes, or (ii) is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes (provided that, with respect to clause (ii), Priority Energy shall not include Energy that is generated using capacity that was wholly or partially financed through the monetization of renewable tax credits, whether such monetization is accomplished through a tax equity investment or otherwise, or that is generated from federally owned and operated hydroelectric facilities, including through the United States Army Corps of Engineers and the United States Bureau of Reclamation, and marketed by the Bonneville Power Administration or the Western Area Power Administration).

“Project Administration Fee” means the monthly fee payable by Purchaser as described in Section 3.2(b).

[“Project Participant” has the meaning specified in the Bond Indenture.]

“Purchaser” has the meaning specified in the preamble.

“Purchaser Default” has the meaning specified in Section 17.2.

“Purchaser’s Statement” has the meaning specified in Section 14.1(a).

“Qualifying Use Requirements” means, with respect to any Energy delivered under this Agreement, such Energy is used (i) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

[“Rating Agency” has the meaning specified in the Bond Indenture.]

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Issuer and MSES.

“Real-Time Market Price” means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Real-Time Market Price hereunder be less than $0.00/MWh.

“Remarketing Election Deadline” means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice, which shall be 4:00 p.m. PPT on the 10th day of the Month (or, if such day is not a Business Day, the next succeeding Business Day) prior to the first delivery Month of a Reset Period with respect to which a Potential Remarketing Event has occurred.
“Remarketing Election Notice” has the meaning specified in Section 3.4(b).

“Renewable Energy Credit” or “REC” has the meaning specified for “Renewable Energy Credit” in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Reset Period” means each [“Reset Period” under the Re-Pricing Agreement.]

“Reset Period Notice” has the meaning specified in Section 3.4(a).

“Schedule”, “Scheduled” or “Scheduling” means the actions of Issuer, Purchaser and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

“Transmission Provider(s)” means any entity or entities transmitting or transporting Energy on behalf of Issuer or Purchaser to or from the Delivery Point.

“Trustee” means [____], and its successors as Trustee under the Bond Indenture.

“Voided Remarketing Election Notice” has the meaning specified in Section 3.4(b).

“WREGIS” means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to “Articles,” “Sections,” “Schedules” and “Exhibits” shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

ARTICLE II
EXECUTION DATE AND DELIVERY PERIOD; NATURE OF ENERGY PROJECT
Section 2.1  **Execution Date; Delivery Period.** Unless this Agreement is terminated pursuant to Article XVII, delivery of Energy under this Agreement shall commence and continue for the Delivery Period.

Section 2.2  **Termination Due to Failure to Issue Bonds or Provide Minimum Discount.** Each Party shall have a right to terminate this Agreement with the effect that this Agreement shall be of no further force or effect and the Parties shall have no rights or obligations hereunder if (a) the Bonds are not issued on or before [____], 2021, or (b) Issuer notifies Purchaser that the expected Available Discount for the Initial Reset Period is less than the Minimum Discount.

Section 2.3  **Nature of Energy Project.** Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Energy to Purchaser under this Agreement exclusively through its purchase of long-term supplies of Energy from MSES pursuant to the Energy Project and that Issuer is financing its purchase of such long-term supplies through the issuance of the Bonds. As provided in Section 3.2(a) below, [Purchaser shall pay a fixed price for Energy during the Initial EPS Energy Period and thereafter shall pay a floating price, less the Monthly Discount in each case]².

Section 2.4  **Pledge of this Agreement.** Purchaser acknowledges and agrees that Issuer will pledge its right, title, and interest under this Agreement and the revenues to be received under this Agreement (other than revenues attributable to the Project Administration Fee) to secure Issuer’s obligations under the Bond Indenture.

**ARTICLE III**

**SALE AND PURCHASE**

Section 3.1  **Sale and Purchase of Energy.** Issuer agrees to sell and deliver or cause to be delivered to Purchaser, and Purchaser agrees to purchase and take or cause to be taken from Issuer, in each case, on a Firm (LD) basis, the Contract Quantity of Energy pursuant to the terms and conditions set forth in this Agreement.

Section 3.2  **Pricing.**

(a)  For each MWh of Energy delivered to Purchaser, Purchaser shall pay Issuer the applicable Contract Price. With respect to each MWh delivered under this Agreement, “Contract Price” means:

  [(i) for Assigned Energy during the Initial EPS Energy Period, (A) the Assigned Fixed Price minus (B) the Monthly Discount; and

  (ii) for Assigned Energy after the Initial EPS Energy Period, (A) the Day-Ahead Average Price for the Month in which Energy is delivered, minus (B) the Monthly Discount.]

² HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.
Discount.] The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

(b) Issuer shall bill and Purchaser shall pay each Month, as part of the Billing Statement described in Article XIV, a “Project Administration Fee” equal to the product of (i) the quantity of MWhs delivered to Purchaser for such Month times (ii) [$0.____]/MWh (as may be modified by the Parties from time to time). [NOTE: CCAs to confirm the amount of the Project Administration Fee, if any.]

(c) During the term of this Agreement, promptly following completion of the annual audit of Issuer’s financial statements at the end of each fiscal year (currently the twelve-month period ending [____]), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Energy Project for that fiscal year. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to Purchaser and the other Project Participants in the amount available after making allowances for any necessary and appropriate reserves and contingencies (including but not limited to amounts deemed reasonably necessary by Issuer to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds. The amount available for refund shall be allocated among and paid annually to Purchaser and the other Project Participants in proportion to their respective purchases for such fiscal year. As of the Execution Date, the projected Annual Refund for the Initial Rate Period is $0.0x] per MWh.

Section 3.3 No Obligation to Take Base Energy. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Energy hereunder, and Issuer shall cause MSES to remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement.

Section 3.4 Reset Period Remarketing.

(a) Reset Period Notice. For each Reset Period, Issuer shall provide to Purchaser, at least ten (10) days prior to the Remarketing Election Deadline, formal written notice setting forth (i) the duration of such Reset Period, (ii) the [Estimated Available Discount (as defined in the Re-Pricing Agreement)] for such Reset Period, and (iii) the applicable Remarketing Election Deadline (a “Reset Period Notice”). Issuer may thereafter update such notice at any time prior to the Remarketing Election Deadline and may extend the Remarketing Election Deadline in its sole discretion in any such update.

(b) Remarketing Election. If the Reset Period Notice (or any update thereto) indicates that the Available Discount in such notice is not at least equal to the Minimum Discount for that Reset Period, then: (i) a “Potential Remarketing Event” shall be deemed to exist, and (ii) Purchaser may, not later than the Remarketing Election Deadline, issue a written notice in the form attached hereto as Exhibit C (a “Remarketing Election Notice”) to Issuer, MSES and the Trustee

3 HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.
electing for all of Purchaser’s Energy that would otherwise be delivered hereunder to be remarketed during the applicable Reset Period; provided, however, if the actual Available Discount, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount, then Issuer may, in its sole discretion, elect by written notice to Purchaser to treat such Remarketing Election Notice as void (a “Voided Remarketing Election Notice”). [If Purchaser issues a valid Remarketing Election Notice (other than a Voided Remarketing Election Notice), then Purchaser shall have no rights or obligations to take any Energy hereunder or to receive any Annual Refund attributable to the applicable Reset Period.]\(^4\) For the avoidance of doubt, in the event that Purchaser issues a Remarketing Election Notice (other than a Voided Remarketing Notice), any rights and obligations assigned to MSCG under the Initial Assigned PPA or a subsequent Assignment Agreement including, without limitation, the right to receive Assigned Energy, shall revert to Purchaser as of the end of the Initial Reset Period or the then-current Reset Period, as applicable.

(c) **Final Determination of Available Discount.** The Parties acknowledge and agree that the final Available Discount for any Reset Period following the Initial Reset Period will be determined on the applicable [Re-Pricing Date (as defined in the Re-Pricing Agreement)], and that such Available Discount may differ from the estimate or estimates of such Available Discount provided to Purchaser prior to the applicable Remarketing Election Deadline. Accordingly, the Parties agree that:

(i) the Available Discount for any Reset Period will not be less than the Minimum Discount applicable to such Reset Period, unless Issuer has provided notice of a Potential Remarketing Event to Purchaser in accordance with Section 3.4(b); and

(ii) if Purchaser receives notice of a Potential Remarketing Event and has not provided a Remarketing Election Notice prior to the applicable Remarketing Election Deadline, Purchaser shall be deemed to have elected to continue to purchase and receive its Contract Quantity at a Contract Price that reflects the Monthly Discount portion of the Available Discount as finally determined on the applicable Re-Pricing Date, plus Purchaser’s right to its share of Annual Refunds, if any, and all delivery and purchase obligations under this Agreement shall continue in full force and effect for the applicable Reset Period.

(d) **Resumption of Deliveries.** Notwithstanding the issuance of any Remarketing Election Notice for a Reset Period, Purchaser will (i) remain obligated to purchase the Contract Quantities hereunder for each subsequent Reset Period, unless Purchaser issues a new valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any such Reset Period in accordance with Section 3.4(b) and (ii) not make any new commitment to purchase Priority Energy during such Reset Period to the extent any such commitment could reasonably be expected to cause, during any portion of the Delivery Period after such Reset Period, Purchaser’s aggregate obligations to purchase Priority Energy (including its obligation to purchase Priority Energy hereunder) to exceed Purchaser’s expected aggregate requirements for Energy that will be used (A) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (B)

\(^4\) HB NTD: To be updated consistent with provisions of Indenture relating to distribution of Annual Refund.
in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code.

(e) Reduction of Contract Quantity. The Parties recognize and agree that the Contract Quantity may be reduced in a Reset Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Issuer and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) Issuer will notify Purchaser, (B) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (C) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

ARTICLE IV
FAILURE TO DELIVER OR TAKE ENERGY

Notwithstanding anything herein to the contrary, neither Purchaser nor Issuer shall have any liability or other obligation to one another for any failure to Schedule, take, or deliver Assigned Product.

ARTICLE V
TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

Section 5.2 Scheduling. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Agreement.

Section 5.3 Title and Risk of Loss. Title to the Energy delivered under this Agreement and risk of loss shall pass from Seller to Buyer at the Assigned Delivery Point. The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.

Section 5.4 Deliveries within CAISO or Another Balancing Authority. The Parties acknowledge that Energy delivered by Issuer at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Energy into the applicable Balancing Authority shall constitute delivery of such Energy to Purchaser hereunder.
ARTICLE VI
PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 Future PPA Assignments. In connection with the expiration or termination of an EPS Energy Period, each of the Parties agrees to satisfy its obligations under the Assignment Letter Agreement, including but not limited to (a) Purchaser’s obligation to exercise Commercially Reasonable Efforts to assign a portion of Purchaser’s rights and obligations under a power purchase agreement under which Project Participant is purchasing EPS Compliant Energy to MSCG or MSES pursuant to an Assignment Agreement and (b) the Parties’ obligations to cooperate in good faith with MSCG and MSES with respect to any proposed assignments.

Section 6.2 Updates to Exhibits A-1 and A-2.

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect any changes in the Hourly Quantities of Base Energy and Monthly Quantities of Assigned Energy and any other changes in connection therewith.

ARTICLE VII
USE OF ENERGY

Section 7.1 Tax Exempt Status of the Bonds. Purchaser acknowledges that the Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its CCA System as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Purchaser further agrees that it will not at any time take any action, or fail to take any action, that would adversely affect the tax-exempt status of the Bonds.

Section 7.2 Priority Energy. Subject to Section 7.5(a), Purchaser agrees to take the Contract Quantities to be delivered under this Agreement (a) in priority over and in preference to all Non-Priority Energy; and (b) on at least a pari passu and non-discriminatory basis with other Priority Energy.

Section 7.3 Remarketing Sales.

(a) Remarketing of Assigned Energy. If notwithstanding Purchaser's compliance with Section 7.1, a quantity of Assigned Energy less than the Monthly Quantity is
delivered hereunder in any Month for any reason, then (i) MSCG shall remarket such undelivered quantity of Assigned Energy to the PPA Supplier at the Contract Price plus the Monthly Discount then in effect, and (ii) Purchaser shall remain responsible for the Project Administration Fee for such quantity of Assigned Energy not delivered hereunder. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Assigned Energy that is remarked pursuant to the foregoing sentence.

(b) Remarketing of Base Energy. Consistent with Section 3.3, to the extent any portion of the Contract Quantity is Base Energy, Issuer shall cause MSES to remarket or purchase such Energy for the account of MSES under the remarketing provisions of the Prepaid Agreement, and Issuer shall credit against the amount owed by Purchaser for such Contract Quantities the amounts received from MSES for such remarketing services, less all directly incurred costs or expenses, including but not limited to remarketing administrative charges paid to MSES under the Prepaid Agreement, but in no event shall the amount of such credit be more than the Contract Price. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Base Energy that is remarked pursuant to the foregoing sentence.

(c) MSES Remarketing Fees. Purchaser shall not in any case have an obligation to make a payment to Issuer with respect to any Remarketing Fee (as defined in the Prepaid Agreement) charged by MSES under the Prepaid Agreement.

Section 7.4 Qualifying Use. Subject to Section 7.5, Purchaser agrees that, without limiting Purchaser’s other obligations under this Article VII, it will use all of the Energy purchased under this Agreement in compliance with the Qualifying Use Requirements. Purchaser agrees that it will provide such additional information, records and certificates as Issuer may reasonably request to confirm Purchaser’s compliance with this Section 7.4.

Section 7.5 Remediation. To the extent that (a) all or a portion of the Contract Quantity is remarkedeted under Section 7.3(a) or Section 7.3(b), (b) Purchaser has exercised Commercially Reasonable Efforts (as determined by Special Tax Counsel (as defined in the Bond Indenture)) to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement and (c) Purchaser is not otherwise in default under this Agreement, then:

(a) MSES shall be obligated under the remarketing provisions of the Prepaid Agreement to purchase the remarkedeted Energy for its own account at the Day-Ahead Market Price (the proceeds of any such purchases, “Disqualified Remarketing Proceeds”), which Disqualified Remarketing Proceeds are for the benefit of Purchaser in that such proceeds reduce its payment obligations hereunder;

(b) Purchaser shall (i) exercise Commercially Reasonable Efforts to use an amount equivalent to such Disqualified Remarketing Proceeds to purchase Non-Priority Energy and use such Non-Priority Energy in compliance with the Qualifying Use Requirements in order to remediate such Disqualified Remarketing Proceeds and (ii) apply its purchases of Non-Priority Energy to remediate Disqualified Remarketing Proceeds under this Agreement prior to remediating such proceeds under any other contract that provides for the purchase of Priority Energy;
(c) in order to track compliance with Purchaser’s obligations under Section 7.5(b) above, Purchaser shall deliver a Remediation Certificate in the form of Exhibit H hereto to Issuer and MSES by the [tenth] day of the Month subsequent to any relevant Non-Priority Energy purchases (which may include purchases of Energy from CAISO to the extent such Energy is used in compliance with the Qualifying Use Requirements);

(d) for Disqualified Remarketing Proceeds remediated under this Section 7.5, Issuer shall pay Purchaser the Monthly Discount associated with such Disqualified Remarketing Proceeds on the last Business Day of the Month following the Month in which Purchaser provides a certificate under clause (c) evidencing such remediation; and

(e) to the extent any Disqualified Remarketing Proceeds are not remediated within twelve Months of the date on which such proceeds were received by Issuer, then MSES shall be obligated under the Prepaid Agreement to exercise Commercially Reasonable Efforts to remediate such Disqualified Remarketing Proceeds under the Prepaid Agreement and Purchaser’s ability to remediate such remarketing proceeds shall be subject to MSES’s successful remediation of such proceeds through sales to other purchaser(s);

provided that, for the avoidance of doubt, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time that Purchaser has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement, then Purchaser shall not be entitled to remediate any Disqualified Remarketing Proceeds related to the resulting remarketing of Base Energy by MSES.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS

Section 8.1 Representations and Warranties of the Parties. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) For Issuer as the representing Party, Issuer is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code;

(b) For Purchaser as the representing Party, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code, duly organized and validly existing under the Laws of the State of California;

(c) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(d) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party’s knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its
obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(e) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(f) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights generally and by general principles of equity;

(g) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(h) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Issuer, the lien of the Bond Indenture;

(i) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(j) it enters this Agreement as a bona-fide, arm’s-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Warranty of Title. Issuer warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Purchaser, free and clear of all liens, encumbrances, and claims.
Section 8.3 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS ARTICLE VIII, ISSUER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.4 Continuing Disclosure. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer including its most recent audited financial statements for use in Issuer’s offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its continuing disclosure undertakings under Rule 15(c)2-12 of the United States Securities and Exchange Commission. Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

ARTICLE IX
TAXES

Issuer shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Point, and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. Purchaser shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates.

ARTICLE X
DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “chairperson”) within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge
to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages.

In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys’ fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Judicial Reference.

(a) Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “Dispute”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), or their successor sections (a “Reference Proceeding”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b) Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the “Disputing Party”) shall provide the other Party (the “Responding Party”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “Notice of Dispute”). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “Dispute Response”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the “Negotiation Period”), then either Party may provide to the other Party written notice of intent for judicial reference (the “Impasse Notice”) in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two (2) referees (the
“Party-Appointed Referees”) shall appoint a third referee (the “Third Referee”, together with the Party-Appointed Referees, the “Referees”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “Court”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees
will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) **Decision.** The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(f) **Expenses.** Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

### ARTICLE XI
**FORCE MAJEURE**

Section 11.1 **Applicability of Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party’s non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 **Settlement of Labor Disputes.** Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

### ARTICLE XII
**GOVERNMENTAL RULES AND REGULATIONS**

Section 12.1 **Compliance with Laws.** This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; provided, however, that nothing herein shall be construed to restrict or limit either Party’s right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.
Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII
ASSIGNMENT

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; provided, however, that, subject to Section 18.14, neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement without the prior written consent of the other Party. Prior to assigning this Agreement, Purchaser shall deliver to Issuer (i) written confirmation from each of the Applicable Rating Agencies, provided that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by the Applicable Rating Agencies to the Bonds; or (ii) written confirmation from each of the Applicable Rating Agencies, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by the Applicable Rating Agencies to the Bonds. Whenever an assignment or a transfer of a Party’s interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party’s assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

ARTICLE XIV
PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Purchaser shall deliver to Issuer a statement (a “Purchaser’s Statement”) listing any other amounts due to Purchaser in connection with this Agreement with respect to the prior Month(s).
(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the “Billing Date”), Issuer shall deliver a statement (a “Billing Statement”) to Purchaser indicating (i) the total amount due to Issuer for Energy delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Issuer or Purchaser. If the actual quantity delivered is not known by the Billing Date, Issuer may provisionally prepare a Billing Statement based on Issuer’s best available knowledge of the quantity of Energy delivered, which shall not exceed the Monthly Quantity or the sum of the Hourly Quantities in such Month, as applicable, plus any make-up quantities delivered during such Month. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Purchaser at the Default Rate) will then be adjusted on the following Month’s Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to the Trustee for the benefit of the Issuer by wire transfer (pursuant to the Trustee’s instructions), in immediately available funds, on or before the 20th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser’s instructions), in immediately available funds, on or before the 28th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the following Business Day.

(b) If Purchaser fails to issue a Purchaser’s Statement with respect to any Month, Issuer shall not be required to estimate any amounts due to Purchaser for such Month, provided that Purchaser may include any such amount on subsequent Purchaser’s Statements issued within the next sixty (60) days. The sixty (60) day deadline in this subsection (b) replaces the two (2) year deadline in Section 14.5(b) with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts; Correction of Index Price.

(a) If Purchaser disputes any amounts included in the Issuer’s Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Purchaser may have; provided, however, that Purchaser shall have the right, after payment, to dispute any amounts included in a Billing Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5. If Issuer disputes any amounts included in the Purchaser’s Statement, Issuer may
withhold payment to the extent of the disputed amount; provided, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

(b) If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within 30 days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than 30 days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 14.4 Late Payment. If Purchaser fails to remit the full amount payable within one Business Day of when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Purchaser’s Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Purchaser’s Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within thirty (30) days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on an incorrect Billing Statement shall bear interest at the Default Rate from the date such payment was made.

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV.
Notwithstanding the foregoing, payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Section 14.7  **Source of Purchaser’s Payments.** Purchaser covenants and agrees to make payments due hereunder from CCA Revenues, and only from such CCA Revenues, as an operating expense of its CCA System; **provided**, however, that Purchaser may apply any legally available monies to the payment of amounts due hereunder.5

Section 14.8  **Rate Covenant.** Purchaser hereby covenants and agrees that it will establish, fix, prescribe, maintain, and collect rates, fees, and charges from the customers of its CCA System so as to provide CCA Revenues sufficient to enable Purchaser to pay any other amounts legally payable from CCA Revenues, and to maintain any required reserves for Purchaser’s CCA System. Purchaser further covenants and agrees that it shall not furnish or supply Energy services free of charge to any Person, except any such service free of charge that Purchaser is supplying on the date hereof as has been specifically identified by Purchaser to Issuer in writing, and it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of Energy to its customers. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to make any payments hereunder except from CCA Revenues.6

Section 14.9  **Pledge of CCA Revenues.** Purchaser shall not grant any lien on or security interest in, or otherwise pledge or encumber, the CCA Revenues if the terms or effect of such lien, pledge or other encumbrance results in such lien, pledge or other encumbrance having priority over the obligations of Purchaser to pay the Contract Price, which obligations constitute operating expenses of Purchaser.

Section 14.10  **Financial Responsibility.** When reasonable grounds for insecurity of payments due under this Agreement arise, Issuer may demand, and Purchaser shall provide within two (2) Business Days if demanded, adequate assurance of performance. Reasonable grounds include but are not limited to the occurrence of an insolvency or liquidation proceeding with respect to Purchaser or the downgrading of Purchaser’s credit rating, if any, to a level below investment grade, or such facts and circumstances which would constitute reasonable grounds for insecurity under applicable Law. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Issuer, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend its performance under this Agreement, including the making of deliveries of Energy to Purchaser, on one (1) day written notice and shall not be obligated to restore such performance until the later of (i) the first day of the Month after such demand has been satisfied, and (ii) the completion of the term of deliveries to any replacement sales customer to which MSES has remarketed the Energy on behalf of Issuer.

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5 NTD: Under review by CCAs.
6 NTD: Under review by CCAs.
ARTICLE XV
[RESERVED]

ARTICLE XVI
NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to the other Party (or to a third party) shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party; provided that any notice modifying payment instructions must be provided via certified mail with a contact person and phone number included for verification purposes. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days’ prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

ARTICLE XVII
DEFAULT; REMEDIES; TERMINATION

Section 17.1 Issuer Default. Each of the following events shall constitute an “Issuer Default” under this Agreement:

(a) any representation or warranty made by Issuer in this Agreement proves to have been incorrect in any material respect when made; or

(b) Issuer fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following the earlier of (i) receipt by Issuer of notice thereof or (ii) an officer of Issuer obtaining actual knowledge of such default.

Section 17.2 Purchaser Default. Each of the following events shall constitute a “Purchaser Default” under this Agreement:

(a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for one (1) Business Day following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default;

(b) Purchaser (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted
against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

(c) any representation or warranty made by Purchaser in this Agreement proves to have been incorrect in any material respect when made; or

(d) Purchaser fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than fifteen (15) days following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default.

Section 17.3 Remedies Upon Default.

(a) Termination. If at any time an Issuer Default or a Purchaser Default has occurred and is continuing, then the non-defaulting Party may do any or all of the following (i) by notice to the defaulting Party specifying the relevant Issuer Default or Purchaser Default, as applicable, terminate this Agreement effective as of a day not earlier than the day such notice is deemed given under Article XVI and/or (ii) declare all amounts due to the non-defaulting Party under this Agreement or any part thereof immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of intent to demand, protest or other formalities of any kind, all of which are hereby expressly waived by the defaulting Party; provided, however, this Agreement shall automatically terminate and all amounts due to the non-defaulting Party hereunder shall immediately become due and payable as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition that upon the occurrence of a Purchaser Default specified in Section 17.2(b)(iv) or, to the extent analogous thereto, Section 17.2(b)(viii). In addition, during the existence of an Issuer Default or a Purchaser Default, as applicable, the non-defaulting Party may exercise all other rights and remedies available to it at Law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of this Agreement.
(b) Additional Remedies. In addition to the remedies set forth in Section 17.3(a) (and without limiting any other provisions of this Agreement), during the existence of any Purchaser Default, Issuer may suspend its performance hereunder and discontinue the supply of all or any portion of the Energy otherwise to be delivered to Purchaser by it under this Agreement. If Issuer exercises its right to suspend performance under this Section 17.3(b), Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Agreement. Deliveries of Energy may only be reinstated, at a time to be determined by Issuer, upon (i) payment in full by Purchaser of all amounts then due and payable under this Agreement and (ii) payment in advance by Purchaser at the beginning of each Month of amounts estimated by Issuer to be due to Issuer for the future delivery of Energy under this Agreement for such Month. Issuer may continue to require payment in advance from Purchaser after the reinstatement of Issuer’s supply services under this Agreement for such period of time as Issuer in its sole discretion may determine is appropriate. In addition, and without limiting any other provisions of or remedies available under this Agreement, if Purchaser fails to accept from Issuer any Energy tendered for delivery under this Agreement, Issuer shall have the right to sell such Energy to third parties on any terms that Issuer, in its sole discretion, determines are appropriate.

(c) Effect of Early Termination. As of the effectiveness of any termination date in accordance with clause (i) of Section 17.3(a), (i) the Delivery Period shall end, (ii) the obligation of Issuer to make any further deliveries of Energy to Purchaser under this Agreement shall terminate, and (iii) the obligation of Purchaser to receive deliveries of Energy from Issuer under this Agreement will terminate. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII. Without prejudice to any payment obligation in respect of periods prior to termination, no payments will be due from either Party in respect of periods occurring after the effective termination date of this Agreement.

Section 17.4 Termination of Prepaid Agreement. Purchaser acknowledges and agrees that (i) in the event the Prepaid Agreement terminates for any reason prior to the end of the Delivery Period, this Agreement shall terminate on the effective date of early termination of the Prepaid Agreement (which date shall be the last date upon which deliveries are required thereunder, subject to all winding up arrangements) and (ii) Issuer’s obligation to deliver Energy under this Agreement shall terminate upon the termination of deliveries of Energy to Issuer under the Prepaid Agreement. Issuer shall provide notice to Purchaser of any early termination date of the Prepaid Agreement. The Parties recognize and agree that, in the event that the Prepaid Agreement terminates because of a [Failed Remarketing (as defined in the Bond Indenture)] of the Bonds that occurs in the first Month of a Reset Period, Issuer shall deliver Energy under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, no Monthly Discount or Annual Refunds shall be associated with such deliveries and the Contract Price shall be adjusted accordingly.

Section 17.5 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE

ARTICLE XVIII
MISCELLANEOUS

Section 18.1 Indemnification Procedure. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys’ fees and experts’ fees and to post any appeals bonds; provided, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 Deliveries. Contemporaneously with this Agreement (unless otherwise specified): Each Party shall deliver to the other Party evidence reasonably satisfactory to it of (i) such Party’s authority to execute, deliver and perform its obligations under this Agreement
and (ii) the appropriate individuals who are authorized to sign this Agreement on behalf of such Party;

(a) as of the date hereof, Purchaser shall deliver to Issuer a fully executed Federal Tax Certificate in the form attached hereto as Exhibit D; provided that, if the Bond Closing Date occurs after [_______], 2021, Purchaser shall deliver an updated Federal Tax Certificate, in the form attached hereto as Exhibit D but utilizing data for the five calendar years ending December 31, 2020, on the Bond Closing Date;

(b) on the Bond Closing Date, Purchaser shall deliver to Issuer an opinion of counsel to Purchaser in the form attached hereto as Exhibit E;

(c) on the Bond Closing Date, Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth hereto as Exhibit G.

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION’S LAW.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.
Section 18.8  **Winding Up Arrangements.** All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9  **Relationships of Parties.** The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10  **Immunity.** Each Party represents and covenants to and agrees with the other Party that it is not entitled to and shall not assert the defense of sovereign immunity or governmental immunity with respect to its obligations or any Claims under this Agreement, and each hereby waives any such defense of sovereign or governmental immunity to the full extent permitted by Law.

Section 18.11  **Rates and Indices.** If the source of any publication used to determine the index or other price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, an alternative index or other price will be used based on the determinations made by Issuer and MSES under [Section 18.11 of the Prepaid Agreement]. Issuer shall provide Purchaser the opportunity to provide its recommendations and other input to Issuer for Issuer’s use in the process for selecting such alternative index or other price under [Section 18.11 of the Prepaid Agreement].

Section 18.12  **Limitation of Liability.** The obligations of Issuer under this Agreement are special and limited obligations payable solely from the revenues, income and funds of its Energy Project that are pledged pursuant to the Bond Indenture.

Section 18.13  **Counterparts.** This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14  **Third Party Beneficiaries; Rights of Trustee.** Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the amounts payable by Purchaser under this Agreement (other than amounts payable in respect of the Project Administration Fee) to secure Issuer’s obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Purchaser’s obligations under this Agreement, (c) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (d) in the event of any Purchaser Defaults under Section 17.2(a), (i) MSES may, to the extent provided for in, and in accordance with, the [Receivables Purchase Provisions (as defined in the Bond Indenture)].
Indenture), take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and shall thereafter have all rights of collection with respect to such receivables, and (ii) if such receivables are not so assigned, the [Swap Counterparty (as defined in the Bond Indenture)] shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer to the Swap Counterparty was caused by Purchaser’s payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

Section 18.15 Waiver of Defenses. Purchaser waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Purchaser with regard to Purchaser’s obligations pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Power Supply Contract to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Separate Signature Page(s) Attached]
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _______________________________
Name: _______________________________
Title: _______________________________
[PARTICIPANT]

By: ______________________________
Name: ____________________________
Title: ____________________________
EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To come.]
<table>
<thead>
<tr>
<th>EPS ENERGY PERIOD</th>
<th>MONTHLY QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>[To come.]</td>
<td></td>
</tr>
</tbody>
</table>

A-2
EXHIBIT A-3
DAY-AHEAD AVERAGE PRICE WEIGHTING

[To come.]
EXHIBIT B  

NOTICES

IF TO ISSUER:  [____]

Invoicing:  [____]
Payments:  [____]
Statements:  [____]
General Notices:  [____]

IF TO PURCHASER:  [____]
Attention: [____]
[____][____], [____][____]
Phone: [____]
Email: [____]

Energy Related:  [____]
Phone: [____]
Email: [____]

Invoicing/Payments:  [____]
Phone: [____]
Email: [____]
EXHIBIT C
FORM OF REMARKETING ELECTION NOTICE

[_____]

Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293

[Trustee]
[Address]

To the Addressees:

The undersigned, duly authorized representative of [_____________________] (the "Purchaser"), is providing this notice (the “Remarketing Election Notice”) pursuant to the Power Supply Contract, dated as of [____], 2021 (the “Supply Contract”), between California Community Choice Financing Authority and Purchaser. Capitalized terms used herein shall have the meanings set forth in the Supply Contract.

Pursuant to [Section 3.4(b)] of the Supply Contract, the Purchaser has elected to have its Contract Quantity for the applicable Reset Period remarketed beginning as of the commencement of such Reset Period. The resumption of deliveries in any future Reset Period shall be in accordance with [Section 3.4(d)] of the Supply Contract.

Given this [___] day of [________], 20[__].

[Participant]

By: _______________________
Printed Name:
Title:

C-1
EXHIBIT D

FORM OF FEDERAL TAX CERTIFICATE

This Federal Tax Certificate is executed in connection with the Power Supply Contract dated as of [_______], 2021 (the “Supply Contract”), by and between the [_____] (“Issuer”) and [_____] (“Purchaser”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Contract or in the Bond Indenture.

WHEREAS Purchaser acknowledges that Issuer is issuing the Bonds to fund the prepayment price under the Prepaid Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Purchaser’s use of Energy acquired pursuant to the Supply Contract and certain funds and accounts of Purchaser will affect the Bonds’ qualification for such tax exemption.

NOW, THEREFORE, PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Purchaser is a community choice aggregator organized as a joint powers authority under the laws of the State of California. As a community choice aggregator, the Purchaser is a load-serving entity providing electricity to customers within the boundaries of cities and/or counties that have elected to participate in Purchaser’s community choice aggregation program. For purposes of this Certificate, the term “service area” of the Purchaser means the boundaries of the cities and/or counties that have elected to participate in the Purchaser’s community choice aggregation program, as well as any other area recognized as the service area of the Purchaser under state or federal law.

2. Purchaser will resell all of the Energy acquired pursuant to the Supply Contract to its retail Energy customers within its service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs or under authorized requirements contracts.

3. From [___, ___] to [____, 2021] the annual average amount of Energy purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser is [_________] MWh. Over the term of the Supply Contract, the Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Purchaser who are located within the service area of the Purchaser to be at least [_____] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Supply Contract is [_________] MWh. The annual average amount of Energy which Purchaser otherwise has a right to acquire (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) is [_________] MWh. The sum of (a) the maximum amount of Energy in any year being acquired pursuant to the Supply Contract, and (b) the amount of Energy that Purchaser otherwise has a right to acquire (including rights to capacity to generate electricity,

7 NTD: As discussed, CCAs to discuss comments and questions regarding form of tax certificate with tax counsel.

D-1
whether owned, leased or otherwise contracted for) in the year described in the foregoing clause (a), is \[\text{[________]}\] MWh. Accordingly, the amount of Energy to be acquired under the Supply Contract by Purchaser, supplemented by the amount of Energy otherwise available to Purchaser as of the Closing Date, during any year does not exceed \[\text{[___]}\]% of the expected annual average amount of Energy to be purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser.

3. In the event of the expiration or termination of an EPS Energy Period, Purchaser agrees to comply with its obligations under the Assignment Letter Agreement, including but not limited to its obligations to (a) exercise Commercially Reasonable Efforts to assign a portion of Purchaser’s rights and obligations under a power purchase agreement under which Purchaser is purchasing EPS Compliant Energy to MSCG or MSES pursuant to an Assignment Agreement and (b) cooperate in good faith with Issuer, MSCG and MSES with respect to any proposed assignments.

4. Purchaser expects to pay for Energy acquired pursuant to the Supply Contract solely from funds derived from its operations as a community choice aggregator. Purchaser expects to use current CCA Revenues of its CCA System to pay for current Energy acquisitions. Neither the Purchaser nor any person who is a related party to the Purchaser will hold any funds or accounts in which monies are set aside and invested and which are reasonably expected to be used to pay for Energy more than one year after such monies are set aside. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Purchaser or any persons who are related Persons to Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

_______________, 2021

By: ________________________________

[Name]
[Title]
EXHIBIT E
FORM OF OPINION OF COUNSEL TO PURCHASER

California Community Choice Financing Authority
[____]. [____]

Morgan Stanley Energy Structuring, L.L.C.
New York, NY

Morgan Stanley
New York, New York

[insert name of trustee], as trustee
[____]. [____]

[Swap Counterparty]
[____]. [____]

Re: Power Supply Contract between [Participant] and California Community Choice Financing Authority dated as of [____], 2021

Ladies and Gentlemen:

We are Counsel to [Participant] (“Purchaser”). Purchaser is a Purchaser in the Energy Project undertaken by California Community Choice Financing Authority (“Issuer”). We are furnishing this opinion to you in connection with the Power Supply Contract between Issuer and Purchaser dated as of [____], 2021 (the “Supply Contract”).

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning as is ascribed to them in the Supply Contract.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

(a) The Constitution and laws of the State of California (the “State”) including, as applicable, acts, ordinances, certificates, articles, charters, bylaws, and agreements pursuant to which Purchaser was created and by which it is governed;

(b) Resolution No. [__], duly adopted by Purchaser on [_____________] (the “Resolution”) and certified as true and correct by certificate and seal, authorizing Purchaser to execute and deliver the Supply Contract;

(c) A copy of the Supply Contract executed by Purchaser; and

E-1
(d) All outstanding instruments relating to bonds, notes, or other indebtedness of or relating to Purchaser and Purchaser's CCA System (as defined in the Supply Contract).

We have also examined and relied upon originals or copies, certified or otherwise authenticated to our satisfaction, of such records, documents, certificates, and other instruments, and made such investigations of law, as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

Based upon the foregoing, we are of the opinion that:

1. Purchaser is a joint powers authority of the State, duly organized and validly existing as a community choice aggregator under the laws of the State, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under the Agreement.

2. The execution, delivery, and performance by Purchaser of the Supply Contract have been duly authorized by the governing body of Purchaser and do not and will not require, subsequent to the execution of the Supply Contract by Purchaser, any consent or approval of the governing body or any officers of Purchaser.

3. The Supply Contract is the legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

4. No approval, consent or authorization of any governmental or public agency, authority, commission or person, or, to our knowledge, of any holder of any outstanding bonds or other indebtedness of Purchaser, is required with respect to the execution, delivery and performance by Purchaser of the Supply Contract or Purchaser's participation in the transactions contemplated thereby other than those approvals, consents and/or authorizations that have already been obtained.

5. The authorization, execution and delivery of the Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) to our knowledge will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

6. Purchaser is not in breach of or default under any applicable constitutional provision or any law or administrative regulation of the State or the United States or any applicable judgment or decree or, to our knowledge, any loan or other agreement, resolution, indenture, bond, note, resolution, agreement or other instrument to which Purchaser is a party or to which Purchaser
or any of its property or assets is otherwise subject, and to our knowledge no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument.

7. Payments to be made by Purchaser under the Supply Contract shall constitute operating expenses of Purchaser's CCA System payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.

8. As of the date of this opinion, to the best of our knowledge after due inquiry, there is no pending or threatened action or proceeding at law or in equity or by any court, government agency, public board or body affecting or questioning the existence of Purchaser or the titles of its officers to their respective offices or affecting or questioning the legality, validity, or enforceability of this Supply Contract nor to our knowledge is there any basis therefor.

This opinion is rendered solely for the use and benefit of the addressees listed above in connection with the Supply Contract and may not be relied upon other than in connection with the transactions contemplated by the Supply Contract, or by any other person or entity for any purpose whatsoever, nor may this opinion be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity, without the prior written consent of the undersigned.

Very truly yours,
## EXHIBIT F

### MONTHLY DISCOUNT

<table>
<thead>
<tr>
<th>Monthly Discount:</th>
<th>$[____ ]/MWh</th>
</tr>
</thead>
</table>

F-1
EXHIBIT G
FORM OF CLOSING CERTIFICATE

CLOSING CERTIFICATE OF PURCHASER

__________, 2021

Re: California Community Choice Financing Authority
[Energy Project Revenue Bonds]

The undersigned _______________________________ of the [_____] (the “Purchaser”), hereby certifies as follows in connection with the Power Supply Contract dated as of __________, 2021 (the “Agreement”) between the Purchaser and California Community Choice Financing Authority (“Issuer”) and the issuance and sale by Issuer of the above-referenced bonds (the “Bonds”) (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

1. Purchaser is a community choice aggregator, duly created and validly existing as a joint powers authority, and is in good standing, under the laws of the State of California (the “State”), and has the corporate power and authority to enter into and perform its obligations under the Agreement.

2. By all necessary official action on its part, the Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Purchaser of the obligations on its part contained in the Agreement, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.

3. The Agreement constitutes the legal, valid and binding obligation of the Purchaser.

4. The authorization, execution and delivery of the Agreement and compliance with the provisions on the Purchaser’s part contained therein (a) will not conflict with or constitute a breach of or default under (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

5. The Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other
instrument to which the Purchaser is a party or to which the Purchaser or any of its property or assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Purchaser under any of the foregoing.

6. Payments to be made by the Purchaser under the Agreement shall constitute operating expenses of the Purchaser’s CCA System (as defined in the Agreement) payable solely from the revenues and other available funds of Purchaser’s CCA System as a cost of purchased electricity. The application of the revenues and other available funds of the Purchaser’s CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Purchaser in any court or administrative body which would (a) contest the right of the officials of the Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Purchaser, (c) contest the validity, due authorization and execution of the Agreement or (d) attempt to limit, enjoin or otherwise restrict or prevent the Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of the Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Purchaser of its obligations under the Agreement have been duly obtained.

9. The representations and warranties of the Purchaser contained in the Agreement were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to the Purchaser contained in the Official Statement dated __________, 2021 with respect to the Bonds, including Appendix B thereto (the “Official Statement”), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. No event affecting the Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with respect to the Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.
IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

[_____]

By________________________________________

Name:

Title:
EXHIBIT H

FORM OF REMEDIATION CERTIFICATE

[____], 20__

Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293
Attn: Miscellaneous Notices
Email: [______]

Re: Power Supply Contract with [______]: [Section 7.5] Remediation

To the addressees:

The undersigned, duly authorized representative of [_____] (“Purchaser”), hereby certifies as follows in connection with the Power Supply Contract, dated as of [______], 2021 (the “Contract”), between Purchaser and [______] and remediation of Disqualified Remarketing Proceeds pursuant to [Section 7.5] of the Contract. Capitalized terms used herein shall have the meanings set forth in the Contract.

Set forth as Attachment 1 hereto is a copy of Purchaser’s invoice for the Month of [______] for purchases of Energy from [______] [NOTE: Insert reference to supplier.] pursuant that certain [______] [NOTE: Insert reference to applicable supply agreement.], and all of such Energy was used in compliance with the Qualifying Use Requirements.

In witness whereof the undersigned has executed this Certificate on and as of the date first written above.

[PARTICIPANT]

By _________________________________

[Name]
[Title]
LETTER AGREEMENT

[____], 2020

[CCA]

[____]

[____]  

[Issuer]

[____]

[____]  

Re: PPA Assignments for Delivery under Prepay Energy Agreements

Ladies and Gentlemen:

This Letter Agreement (this “Letter Agreement”) confirms our mutual agreement with respect to the matters set forth below and relates to (i) that certain Power Supply Contract (the “Power Supply Contract”), dated as of the date hereof, by and between [Issuer] (“Issuer”) and [Participant] (“Project Participant”), (ii) that certain Prepaid Energy Sales Agreement (the “Prepaid Agreement”), dated as of the date hereof, by and between Morgan Stanley Energy Structuring, L.L.C. (“MSES”) and Issuer, and (iii) that certain Energy Management Contract (together with the Power Supply Contract and the Prepaid Agreement, the “Prepay Energy Agreements”), dated as of the date hereof, by and between Morgan Stanley Capital Group Inc. (“MSCG”) and MSES. Any capitalized term used in this Letter Agreement and not otherwise defined herein shall have the meaning assigned to such term in the Power Supply Contract. In consideration of each party’s execution of the respective Prepay Energy Agreements, as well as the premises above and the mutual covenants and agreements set forth herein, Issuer, Project Participant, MSES and MSCG (collectively, the “Parties”) agree as follows:

1. PPA Assignments for Delivery under Prepay Energy Agreements.

   (a) Initial Assignment. Concurrently with the execution of the Prepay Energy Agreements, Project Participant has assigned and [MSES]/[MSCG] has agreed to assume a portion of Project Participant’s rights and obligations under the Initial Assigned PPA. [NOTE: Initial Assigned PPA to be changed to plural if more than one PPA is assigned at the outset.]

   (b) Replacement Assignments. Commencing (i) six months prior to the expiration of any EPS Energy Period or the resumption of deliveries in a new Reset Period following Participant’s issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract or (ii) otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, Project Participant shall exercise Commercially Reasonable Efforts to assign a portion of Project Participant’s rights and obligations (the “Assigned Rights and Obligations”) under one or more power purchase agreements under which Project Participant is purchasing EPS Compliant Energy pursuant to an Assignment Agreement substantially in the form of (A) the Limited Assignment
Agreement set forth as Exhibit A hereto if the PPA Supplier is an unrelated third party or (B) the Limited Assignment Agreement set forth as Exhibit B hereto if the PPA Supplier is MSCG, and the Parties shall cooperate in good faith with respect to any proposed assignments; provided that

(1) any subsequent Assignment Agreement shall provide (I) for the assignment by Project Participant to either (a) MSES if MSCG is the PPA Supplier or (b) MSCG if the PPA Supplier is an unrelated third party of its right to receive a portion of the Energy (and any associated products set forth in the Assignment Agreement) delivered under the applicable power purchase agreement for each Month of the applicable EPS Energy Period and (II) for payment by MSES or MSCG as applicable to the PPA Supplier under such subsequent power purchase agreement of the Day-Ahead Average Price for each Month of the applicable EPS Energy Period, with such amounts to be credited in the PPA Supplier’s monthly invoice to Project Participant against other amounts owed by Project Participant under the Assigned PPA during the EPS Energy Period;

(2) any third party PPA Supplier must satisfy MSCG’s internal credit and approval requirements and other requirements applied on a nondiscriminatory basis, including any “know your customer” rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies;

(3) any such assignment must be agreed and consented to by Project Participant, MSES and MSCG in their reasonable discretion; and

(4) the Parties recognize that MSCG will be obligated to sell and deliver Assigned Product it receives from a third party PPA Supplier to MSES under the Energy Management Agreement; MSES will be obligated to deliver Assigned Product that it acquires to Issuer under the terms of the Prepaid Agreement; and Issuer will be obligated to deliver Assigned Product that it acquires to Project Participant under the terms of the Power Supply Contract.

(c) MSCG Procurement of EPS Compliant Energy. To the extent that (i) Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement by the date that is 75 days prior to (A) the end of any EPS Energy Period or (B) the resumption of deliveries in a new Reset Period following Participant’s issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract, or (ii) an early termination of an EPS Energy Period has occurred and Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement, then MSCG shall exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Project Participant, provided that:
(1) Project Participant must consent to MSCG’s procurement of any such EPS Compliant Energy for ultimate redelivery to Project Participant, with such consent not to be unreasonably withheld;

(2) the Parties shall act in good faith and in a Commercially Reasonable manner to negotiate any necessary amendments to the Prepay Energy Agreements to facilitate the delivery of such EPS Compliant Energy; and

(3) the period of delivery for any such EPS Compliant Energy (any such period, a “MSCG EPS Energy Period”) shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in a subsequent Reset Period.

(d) Tax Opinion. The Parties acknowledge and agree that their ability to enter into a new Reset Period will be contingent on obtaining an [Opinion of Special Tax Counsel] (as defined in the Bond Indenture), which will be dependent on the availability of EPS Compliant Energy for delivery in such Reset Period.

2. Failure to Obtain EPS Compliant Energy. To the extent an EPS Energy Period terminates or expires and Project Participant and MSCG have been unable to obtain EPS Compliant Energy for delivery under the Prepay Energy Agreements pursuant to the provisions of Paragraph 1, then MSES shall remarket the Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement, subject to the following:

(a) the Parties’ obligations set forth in Paragraph 1 shall continue to apply;

(b) Project Participant shall not make any new commitment to purchase Priority Energy during such a remarketing; and

(c) consistent with [Section 7.5] of the Power Supply Contract, Project Participant shall exercise Commercially Reasonable Efforts to remediate any Disqualified Remarketing Proceeds resulting from MSES’s remarketing;

3. Representations. Each Party represents to each of the other Parties:

(a) Status. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

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1 HB NTD: All parties are incentivized to cooperate to locate EPS Compliant Energy for redelivery through the prepaid transaction, and, from a practical perspective, we think that tying this restriction to whether MSCG rejected the assignment creates ambiguity and the potential for disputes. E.g., If MSCG and a developer cannot agree upon the terms of an Assignment Agreement, did MSCG reject the assignment?
(b) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

(c) **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

(d) **Consents.** All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(e) **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm’s-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No
communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

(g) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

(h) **Status of Parties.** None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

4. **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

5. **Costs and Expenses.** The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

6. **Amendments.** No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

7. **Notices.** Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon written 10 days’ prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at an other address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

8. **Dispute Resolution.**

(a) **Governing Law.** This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, however, that the authority of
Project Participant and Issuer to enter into and perform their obligations under this Agreement shall be determined in accordance with the laws of the State of California.

(b) **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and Project Participant shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within thirty (30) days of the commencement of the arbitration. If either MSCG or Project Participant is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If MSCG and Project Participant-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorneys’ fees reasonably incurred in seeking to enforce the application of this Section 8(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 8(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) **Judicial Reference.** Without limiting the provisions in Section 8(b), if Section 8(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “Dispute”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), or their successor sections (a “Reference Proceeding”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 8(c)(i).
i. **Notice of Dispute.** Prior to initiating the Reference Proceeding, a Party (the “**Disputing Party**”) shall provide the other Parties (the “**Responding Parties**”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “**Notice of Dispute**”). Within ten (10) Days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “**Dispute Response**”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty (60) Days after receipt of the Dispute Response, (the “**Negotiation Period**”), then any Party may provide to the other Parties written notice of intent for judicial reference (the “**Impasse Notice**”) in accordance with the further provisions of this Section 8(c).

ii. **Applicability; Selection of Referees.**

(A) Within ten days of the delivery of an Impasse Notice, each of MSCG and Project Participant shall nominate one (1) referee. The two (2) referees (the “**Party-Appointed Referees**”) shall appoint a third referee (the “**Third Referee**”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(B) If the Party-Appointed Referees are unable to agree on the Third Referee within forty-five (45) Days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “**Court**”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of Project Participant and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iii. **Discovery; Proceedings.**

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within twenty (20) days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within one hundred eighty (180) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.
(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Any matter before the Referee shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referee. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of MSCG and Project Participant shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and Project Participant.

[Signature Pages to Follow]
Very truly yours,

**MSES**

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: __________________________
Name: _________________________
Title: __________________________

**MSCG**

MORGAN STANLEY CAPITAL GROUP INC.

By: __________________________
Name: _________________________
Title: __________________________

ACKNOWLEDGED, ACCEPTED AND AGREED TO as of the date first set forth above:

**PARTICIPANT**

[CCA]

By: __________________________
Name: _________________________
Title: __________________________

**ISSUER**

[ISSUER]

By: __________________________
Name: _________________________
Title: __________________________
EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

[To come.]
EXHIBIT B

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

[To come.]
FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Agreement”) is entered into as of [_____] by and among [____], a [____] (“PPA Seller”), [East Bay Community Energy Authority][Silicon Valley Clean Energy Authority], a joint powers authority and a community choice aggregator organized under the laws of the State of California (“PPA Buyer”), and [Morgan Stanley Capital Group Inc., a Delaware corporation] (“MSCG”).

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain [____], dated as of [____] (the “PPA”);

WHEREAS, in connection with a prepaid electricity transaction between [_______] (“Issuer”) and Morgan Stanley Energy Structuring, L.L.C. (“MSES”), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, MSCG will receive the Assigned Product and MSCG will deliver the Assigned Product to MSES, which will redeliver the Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, MSCG will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the “Parties” hereto; each is a “Party”) agree as follows:

AGREEMENT

1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“Agreement” has the meaning specified in the first paragraph above.

“Assigned Delivery Point” has the meaning specified in Appendix 1.

1 HB NTD: MSCG will be the limited assignee to the extent that the PPA Seller is a third party supplier, but, to the extent that MSCG is the supplier, MSES will be the limited assignee and references to MSCG will be replaced with references to MSES.
“Assigned Energy” means any Electricity associated with the Assigned Product to be delivered to MSCG hereunder pursuant to the Assigned Rights and Obligations.

“Assigned Monthly Quantity” means the first [___] MWs delivered in accordance with the PPA by PPA Seller in each Month during the Assignment Period.

“Assigned Product” includes all (i) Energy and (ii) Green Attributes (PCC1) (as defined in the PPA) produced by the Facility (as defined in the PPA) associated with the Assigned Monthly Quantity.

“Assigned Product Price” means [NOTE: To be the Day-Ahead Price averaged for each day of the prior month if the assignment occurs after the commencement of the prepay transaction or the fixed price for energy under the PPA if assigned in connection with execution of the prepay transaction.].

“Assigned Rights and Obligations” means (i) the rights of PPA Buyer under the PPA to receive the Assigned Monthly Quantity of Assigned Product in each Month during the Assignment Period, as such rights may be limited or further described in the “Further Information” section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSCG hereunder.

“Assignment Early Termination Date” has the meaning specified in Section 5(b).

“Assignment Period” has the meaning specified in Section 5(a).

“Assignment Period End Date” means 11:59:59 p.m. pacific prevailing time on [______].

“Assignment Period Start Date” means [______].

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

“Claims” means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

“Delivered Product Payment Obligation” has the meaning specified in Section 3(a).
“Electricity” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

“Government Agency” means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

“Issuer” means [___], a [____] [NOTE: This will be the JPA or other entity formed for purposes of issuing municipal bonds for the prepaid transaction.].

“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

“Month” means a calendar month.

“MSCG” has the meaning specified in the first paragraph of this Agreement.

“MSES” means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company.

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

“PPA Buyer” has the meaning specified in the first paragraph of this Agreement.

“PPA Seller” has the meaning specified in the first paragraph of this Agreement.

“Prepaid Agreement” means that certain Prepaid Energy Sales Agreement dated as of [_____] by and between MSES and Issuer.

“Prepay Power Supply Contract” means that certain Prepay Power Supply Contract dated [_____] by and between PPA Buyer and Issuer.

“Receivables” has the meaning given to such term in Section 3(e).

“Retained Rights and Obligations” has the meaning specified in Section 3.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

2. Transfer and Undertakings.

   (a) PPA Buyer hereby assigns, transfers and conveys to MSCG all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned
Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer’s assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period.

(c) MSCG hereby accepts such assignment, transfer and conveyance of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be “Retained Rights and Obligations”, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) Limited to Delivered Product Payment Obligation; Invoicing.

i. MSCG’s sole obligation to PPA Seller will be to pay the Assigned Product Price (as defined in the PPA) to PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [___] of the PPA for a quantity up to, but not exceeding, the Assigned Monthly Quantity (the “Delivered Product Payment Obligation”). PPA Buyer shall remain solely responsible for any payment obligations other than the Delivered Product Payment Obligation due under the PPA during the Assignment Period (the “Retained Payment Obligation”).

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSCG, and each such invoice shall indicate (A) the total amount due to PPA Seller under the PPA for such Month (the “Monthly Gross Amount”); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

(b) Retained Rights and Obligations. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or
related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Scheduling.** All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to MSCG upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSCG’s agent with regard to scheduling Assigned Energy; provided, however, that PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs; and (iv) (A) PPA Buyer and PPA Seller will provide copies to MSCG of (I) any notice of force majeure delivered under the PPA and (II) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in a default; (B) PPA Seller will provide copies to MSCG of annual forecasts and monthly forecasts and generation reports delivered under the PPA; and (C) PPA Buyer and PPA Seller, as applicable, will provide copies to MSCG of any other information reasonably requested by MSCG relating to Assigned Product.

(d) **Amendments.** PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG’s rights or obligations under this Agreement until and unless MSCG receives written notice thereof.

(e) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract (“Receivables”) in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSCG pursuant to the Assigned Rights and Obligations, MSES may sell such Receivables to MSCG and MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

4. **Forward Contract.**
The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that the Parties shall constitute “forward contract merchants” within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

(a) Assignment Period. The “Assignment Period” shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.

(b) Early Termination. An “Assignment Early Termination Date” will occur under the following circumstances and as of the dates specified below:

i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;

ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller’s last performance under the PPA following such suspension, expiration, or termination;

iii. the election of MSCG in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSCG’s rights or obligations under this Agreement (provided that MSCG shall not have a right to terminate under this clause (b) to the extent that MSCG (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by MSCG to PPA Buyer and PPA Seller;

iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if MSCG fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSCG of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;
vi. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSCG seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSCG commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSCG consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSCG or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSCG or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSCG and PPA Buyer have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations hereunder immediately following the termination hereof, which Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the “Assignment Period” under the replacement Assignment Agreement as specified in the notice from MSCG or PPA Buyer to the other Parties; and

viii. PPA Buyer may deliver written notice of termination to the other Parties if any change, event or effect occurs, including but not limited to a change in applicable laws or regulations, any issues with the PPA Seller or the PPA, a dispute under the PPA or other similar circumstance, that individually or collectively have or are reasonably expected by PPA Buyer to have a material adverse effect upon (A) the PPA Buyer, (B) its rights and obligations under this Agreement, the Prepay Power Supply Contract, or the PPA, or (C) the benefit the PPA Buyer is receiving by assigning the Assigned Rights and Obligations, with such Assignment Early Termination Date to be the date set forth in a written notice delivered by PPA Buyer to the other Parties; provided that (x) PPA Buyer will provide notice to the other Parties as soon as is reasonably possible that PPA Buyer anticipates exercising this termination right, and (y) PPA Buyer shall exercise commercially
reasonable efforts to propose and agree with MSCG upon a replacement Assignment Agreement prior to exercising this termination right.

(c) **Reversion of Assigned Rights and Obligations.** The parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date the Assigned Rights and Obligations will revert from MSCG to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from MSCG to PPA Buyer, provided that (i) MSCG shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSCG prior to the Assignment Early Termination Date, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date.

6. **Representations and Warranties.**

(a) **Copy of PPA.** PPA Seller and PPA Buyer represent and warrant to MSCG that a true, complete, and correct copy of the PPA is attached hereto as Appendix 3.

(b) **No Default.** PPA Seller and PPA Buyer represent and warrant to MSCG that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other.** Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSCG that:

   i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

   ii. all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations.** Each Party represents to each of the other Parties:

   i. **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

   ii. **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

   iii. **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any
determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents.** All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm’s-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties.** None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

7. **Counterparts.**
This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

8. Costs and Expenses.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.


No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by an electronic transmission) and executed by each of the Parties or confirmed by emails or electronic messages on an electronic messaging system.


Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days’ prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

11. Miscellaneous.

(a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) U.S. Resolution Stay. The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSCG shall be deemed to be a Regulated Entity, and
PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

(c) Reserved.

(d) Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “chairperson”) within thirty (30) days of the commencement of the arbitration. If either MSCG or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the MSCG and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney’s fees reasonably incurred in seeking to enforce the application of this Section 11(d) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 11(d), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(e) Judicial Reference. Without limiting the provisions in Section 11(d), if Section 11(d) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “Dispute”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), or their successor sections (a “Reference Proceeding”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a
Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(e)(i).

i. **Notice of Dispute.** Prior to initiating the Reference Proceeding, a Party (the “Disputing Party”) shall provide the other Parties (the “Responding Parties”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “Notice of Dispute”). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “Dispute Response”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the “Negotiation Period”), then any Party may provide to the other Parties written notice of intent for judicial reference (the “Impasse Notice”) in accordance with the further provisions of this Section 11.

ii. **Applicability; Selection of Referees.**

   (A) Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer shall nominate one (1) referee. The two (2) referees (the “Party-Appointed Referees”) shall appoint a third referee (the “Third Referee”, together with the Party-Appointed Referees, the “Referees”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

   (B) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “Court”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iii. **Discovery; Proceedings.**

   (A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within
180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of MSCG and PPA Buyer shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and PPA Buyer.
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

[PPA SELLER]

By: ____________________________
    Name:_______________________
    Title:________________________

[CCA]

By: ____________________________
    Name:_______________________
    Title:________________________

MORGAN STANLEY CAPITAL GROUP INC.

By: ____________________________
    Name:_______________________
    Title:________________________
Appendix 1
Assigned Rights and Obligations

**PPA:** Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller

**Assigned Delivery Point:** [Facility PNode/Settlement Point (as defined in the PPA)]

**Further Information:** PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

[Include additional requirements, if any]
Appendix 2
Notice Information
[To be completed before signing.]
Appendix 3
Copy of Power Sales Contract
[To be attached.]
PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this “Agreement”) is made and entered into as of [____], 2021, by and among California Community Choice Financing Authority (“CCCFA”), East Bay Community Energy Authority (“EBCE”) and Silicon Valley Clean Energy Authority (“SVCE” and, together with EBCE, the “Commodity Purchasers”), with respect to the Prepaid Energy Project (defined below). CCCFA, EBCE and SVCE may be referred to individually herein as a “Party” and collectively as the “Parties”. Capitalized terms used herein (including in the following Recitals) have the meanings given to such terms in Section 1.

WITNESSETH:

WHEREAS, each Commodity Purchaser is a “community choice aggregator” under the Public Utilities Code; and

WHEREAS, the Commodity Purchasers and certain other community choice aggregators have created CCCFA is a joint exercise of powers authority under and pursuant to the Act and the Joint Powers Agreement; and

WHEREAS, CCCFA’s purpose is to assist its Members (as defined in the Joint Powers Agreement), including the Commodity Purchasers, by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined in the Joint Powers Agreement) and entering into related contracts with Members; and

WHEREAS, CCCFA and each of the Commodity Purchasers are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to the Commodity Purchasers under the terms set forth therein; and

WHEREAS, in order to provide such Energy to the Commodity Purchasers under the Power Supply Contracts, CCCFA is entering into the Prepaid Agreement with MSES, under which it will make a prepayment to MSES for the purchase and delivery of such Energy; and

WHEREAS, the Issuer will finance the prepayment under the Prepaid Agreement and related costs by issuing the Bonds pursuant to the Indenture; and

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Defined Terms. Capitalized terms used herein shall have the meanings set forth below:

Draft Project Administration Agreement
“Act” means Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended.

“Alternate Energy Delivery Point” has the meaning specified in Section 5.1(a) of each Power Supply Contract.

“Annual Refund” means the annual refund, if any, to be provided to a Commodity Purchaser pursuant to Section 3.2(c) of its Power Supply Contract.

“Assigned Delivery Point” has the meaning specified in the applicable Assignment Agreement.

“Assigned Energy” has the meaning specified in the applicable Assignment Agreement.

“Assigned Product” means Assigned Energy and associated renewable energy credits, green energy attributes and any other product included in an Assignment Agreement.

“Assignment Agreement” means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

“Assignment Letter Agreement” has the meaning specified in each Power Supply Contract.

“Base Energy” means Energy to be delivered to an Energy Delivery Point.

“Bonds” means the bonds issued by CCCFA pursuant to the Indenture on or about the date of this Agreement in order to finance the prepayment required to be made to MSES under the Prepaid Agreement and related costs of the Prepaid Energy Project, and any bonds issued to refund such bonds.

“CCCFA” means California Community Choice Financing Authority, a joint exercise of powers authority created under and pursuant to the Act and the Joint Powers Agreement.

“CCCFA Commodity Swap” means the ISDA Master Agreement, Schedule and transaction Confirmation entered into by CCCFA and the swap counterparty named therein, and any replacement swap entered into pursuant to the Prepaid Agreement.

“Commodity Purchaser” means EBCE or SVCE, as applicable, and “Commodity Purchasers” means both EBCE and SVCE.

“Contract Quantity” means, with respect to a Commodity Purchaser, the quantity of Base Energy or Assigned Energy, as applicable, specified for such Commodity Purchaser in Exhibits A-1 and A-2 of its Power Supply Contract, as such Exhibits A-1 and A-2 may be updated from time to time in accordance with the terms of the Power Supply Contract.

“EBCE” means East Bay Community Energy Authority, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt-hours.
“Energy Delivery Point” means, with respect to a Commodity Purchaser, the delivery point for delivery of its Contract Quantity to such Commodity Purchaser as specified in its Power Supply Contract, and shall include, if applicable, any Assigned Delivery Point and any Alternate Delivery Point for such Commodity Purchaser.

“Indenture” means the Trust Indenture, dated as of [________], 2021, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

“Initial Assignment Agreement” with respect to a Commodity Purchaser, the initial assignment agreement or agreements specified in its Power Supply Contract.

“Joint Powers Agreement” means the Joint Powers Agreement by and among the Members of CCCFA named therein, including the Commodity Purchasers, providing for the creation, purposes and powers of CCCFA, as the same may be amended or supplemented from time to time in accordance with its terms.


“Power Supply Contract” means, with respect to a Commodity Purchaser, the Power Supply Contract, dated [________], 2021, between CCCFA and such Commodity Purchaser relating to the purchase by such Commodity Purchaser of Energy acquired by CCCFA pursuant to the Prepaid Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Prepaid Agreement” means the Prepaid Energy Sales Agreement, dated [________], 2021, between CCCFA, as buyer, and MSES, as seller, as amended, restated, supplemented or otherwise modified from time to time.

“Prepaid Energy Project” means the issuance of the Bonds by CCCFA pursuant to the Indenture, the acquisition of Energy and related undertakings of CCCFA under the Prepaid Agreement and the Indenture, and the sale to the Commodity Purchasers of such Energy and related undertakings of CCCFA under the Power Supply Contracts.


“Qualifying Use Requirements” has the meaning set forth in Section 1.1 of each Power Supply Contract.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and MSES.

“Schedule”, “Scheduled” or “Scheduling” means the actions of a Party and/or its designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

“SVCE” means Silicon Valley Clean Energy Authority, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.
“Tax Certificate and Agreement” means the Tax Certificate and Agreement executed and delivered by CCCFA in connection with the issuance of the Bonds relating to certain federal income tax compliance requirements relating to the Prepaid Energy Project.

“Transmission Provider(s)” means any entity or entities transmitting or transporting Energy on behalf of a Party to or from an Energy Delivery Point.

“Trustee” means [____], and its successors as Trustee under the Indenture.

Section 2. Assignment Agreements. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, each Commodity Purchaser has entered into the Initial Assignment Agreement specified in its Power Supply Contract with respect to its entire Contract Quantity;

(b) subject to the terms of the applicable Assignment Letter Agreement, each Commodity Purchaser may from time to time enter into additional Assignment Agreements with respect to all or a portion of its Contract Quantity; and

(c) each Commodity Purchaser shall determine, independent of the other Commodity Purchaser or CCCFA, when and if any Assignment Agreement is entered into or terminated and the underlying agreement and portion of its Contract Quantity to which such Assignment Agreement relates.

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Agreement that is attributable to an Assignment Agreement(s) entered into by a Commodity Purchaser shall be attributable to such Commodity Purchaser under its Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to the Commodity Purchaser’s Assigned Delivery Point and the transfer of other Assigned Product to a Commodity Purchaser, or (b) any accounting for under-deliveries or over-deliveries or other record-keeping requirements with respect to any Assigned Energy and other Assigned Product, all of which shall be the sole responsibility of the applicable Commodity Purchaser pursuant to the related Assignment Agreement(s).

Section 4. Qualified Use; Remarketing of Base Energy. As provided in each Power Supply Contract, any portion of a Commodity Purchaser’s Contract Quantity that is not delivered as Assigned Energy is required to be delivered as Base Energy and simultaneously remarked by MSES pursuant to the Prepaid Agreement. The applicable Commodity Purchaser shall be responsible for accounting for any portion of such Commodity Purchaser’s Contract Quantity deemed delivered as Base Energy and subsequently remarked, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements. Each Commodity Purchaser agrees to provide to CCCFA any information reasonably requested by it in order to comply with any reporting or record-keeping requirements related to such deemed deliveries and remarketing of Base Energy, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Prepaid Agreement, the Indenture or the Tax Certificate and Agreement.

Section 5. CCCFA Commodity Swap. CCCFA shall not take any action to terminate or designate the early termination of the CCCFA Commodity Swap except in accordance with written
instructions of the Commodity Purchasers acting jointly, or unless otherwise required under the terms of the Prepaid Agreement.

Section 6. Directions, Consents and Waivers. CCCFA may be requested or required from time to time to provide certain directions, consents, or waivers under the terms of the Prepaid Agreement, the Indenture and the Re-pricing Agreement. In the event any such direction, consent or waiver relates solely to the Contract Quantity and/or Power Supply Contract of a Commodity Purchaser and no event of default has occurred and is continuing with respect to such Commodity Purchaser under its Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by such Commodity Purchaser. Otherwise, any such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions of the Commodity Purchasers acting jointly.

Section 7. Annual Refund. Any Annual Refund to be provided to the Commodity Purchasers pursuant to Section 3.2(c) of the Power Supply Contracts shall be determined pro rata based on the Contract Quantity of each Commodity Purchaser during the applicable annual period; provided, however, any surplus revenues derived from the remarketing of Base Energy on behalf of a Commodity Purchaser pursuant to Section 7.3 of its Power Supply Contract for a price in excess of the applicable Contract Price (as defined in the Power Supply Contracts) shall be credited to such Commodity Purchaser in calculating such Annual Refund.

Section 8. Re-pricing Information. CCCFA shall provide, or cause MSES to provide, to each Commodity Purchaser such information as is required to be provided by MSES to CCCFA in accordance with the Re-pricing Agreement at such times as are required under the Re-pricing Agreement.

Section 9. Notices. Notices and other information to be provided by a Party to any other Party under this Agreement shall be provided in accordance with Article XVI of the applicable Power Supply Contract.

Section 10. Governing Law. This Agreement and the obligations of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of California.

Section 11. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: ______________________________
Name: ______________________________
Title: ______________________________

EAST BAY COMMUNITY ENERGY AUTHORITY

By: ______________________________
Name: ______________________________
Title: ______________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ______________________________
Name: ______________________________
Title: ______________________________
CUSTODIAL AGREEMENT

This Custodial Agreement (this “Agreement”) is made and entered into as of [____], 2021, by and among [East Bay Community Energy Authority][Silicon Valley Clean Energy Authority], a joint powers authority and a community choice aggregator organized under the laws of the State of California (“PPA Buyer”), Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), and [____], a [____], (the “Custodian” and together with PPA Buyer and MSCG, the “Parties”, and each individually, a “Party”).

RECITALS:

WHEREAS, [____] (“Issuer”) is issuing its Energy Project Revenue Bonds, Series 2021 (the “Bonds”) pursuant to the Trust Indenture, dated as of [____], 2021 (the “Bond Indenture”) between Issuer and The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the Bond Indenture (the “Trustee”); and

WHEREAS, Morgan Stanley Energy Structuring, L.L.C. (“MSES”) and Issuer are entering into that certain Prepaid Energy Sales Agreement, dated as of the date hereof (the “Prepaid Agreement”); and

WHEREAS, in connection with the execution of the Prepaid Agreement, MSES and MSCG are entering into an Energy Management Agreement, dated as of the date hereof (the “Energy Management Agreement”); and

WHEREAS, in connection with the execution of the Prepaid Agreement, Issuer and PPA Buyer are entering into a Power Supply Agreement, dated as of the date hereof (the “Power Supply Agreement” and together with the Prepaid Agreement and the Energy Management Agreement, the “Prepay Supply Contracts”); and

WHEREAS, in connection with or subsequent to the execution of the Prepay Supply Contracts, MSCG, Issuer and PPA Buyer may enter into one or more Limited Assignment Agreements (the “Assignment Agreements”) pursuant to which PPA Buyer partially assigns its rights and obligations under its power supply contracts (“Assigned PPAs”) for redelivery of energy and other specified products pursuant to the Prepay Supply Contracts; and

WHEREAS, the Parties propose to enter into this Custodial Agreement in order to administer payments to be received by the sellers under the Assigned PPAs (each, individually, a “PPA Seller” and collectively the “PPA Sellers”, and which definitions shall include any new PPA Seller identified by MSCG’s delivery of an updated Exhibit A consistent with Section 3(b)).

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Defined Terms. Any capitalized term used herein and not otherwise defined herein (including in the recitals) shall have the meaning assigned to such term in the Power Supply Agreement. The following additional terms, when used in this Agreement (including the preamble
or recitals to this Agreement) and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“Assignment Period” has the meaning specified in Exhibit A, as may be updated from time to time consistent with the terms hereof.

“Assigned Product Price” has the meaning specified in Exhibit A, as may be updated from time to time consistent with the terms hereof.

“Custodial Agreement Payment Date” means the last Business Day preceding the Monthly Statement Payment Date.

“Delivered Product Payment Amount” means, in respect of each Monthly Statement, an amount equal to (a) the actual quantity of Assigned Energy reflected in such Monthly Statement multiplied by the Assigned Product Price then in effect with respect to Energy in the relevant Assigned PPA, less (b) the face amount of any purchased Receivable (as defined in the Prepaid Agreement) that is delivered by MSCG to the Custodian pursuant to Section 4(e).

“Monthly Gross Amount” means, in respect of each Monthly Statement, an amount equal to the total net amount due to the applicable PPA Seller in respect of such Monthly Statement and shall consist of the following components: (a) the Delivered Product Payment Amount and (b) the Retained Payment Amount (if such amount is a positive number for such Month).

“Monthly Statement” means the monthly consolidated invoice delivered to MSCG and PPA Buyer consistent with the terms of the applicable Assignment Agreement.

“Monthly Statement Payment Date” means the last Business Day on which payment with respect to a Monthly Statement may be made before any incremental interest arises thereon or any default or breach arises under the Assigned PPA.

“Retained Payment Amount” means, in respect of each Monthly Statement, an amount equal to (a) all amounts owed to the applicable PPA Seller for such Month, less (b) the Delivered Product Payment Amount; provided that, to the extent the Retained Payment Amount is negative in any Month, then the absolute value of such amount shall represent an amount to be paid by the Custodian to PPA Buyer pursuant to Section 4(c)(ii) hereof.

Section 2. Appointment of Custodian. PPA Buyer and MSCG hereby appoint [____] as Custodian under this Agreement, with such rights and obligations as are specifically set forth herein. The Custodian hereby accepts such appointment under the terms and conditions set forth herein.

Section 3. Payment Instructions to Custodian; Assigned PPA Exhibits.

(a) No later than [seven] days following MSCG and PPA Buyer’s receipt of a Monthly Statement from a PPA Seller, MSCG shall notify the Custodian of the Delivered Product Payment Amount, the Retained Payment Amount, the Monthly Gross Amount, the Monthly Statement Payment Date and the Custodial Agreement Payment Date as reflected in such Monthly Statement.
(b) Exhibit A to this Agreement sets forth certain information regarding the Assigned PPAs as of the date hereof, including the Assignment Periods and Assigned Product Prices for each Assigned PPA, the PPA Sellers thereunder and the payment instructions for payments to the PPA Sellers. MSCG shall deliver an updated Exhibit A to each of the other Parties hereto to reflect any changes to the information set forth therein, including due to the expiration, extension or termination of an Assignment Period or the commencement of a new Assignment Period.

Section 4. Assigned PPA Payments Account.

(a) Custodial Account. With respect to payments required to be made by MSCG and PPA Buyer to the PPA Sellers under the Assigned PPAs, there is hereby established with the Custodian at its office located at [______], the following custodial account: a payments account designated as the “[_____] Acct.”, bearing Custodian’s Account No. [______] (the “Assigned PPA Payments Account”) and all payments made by MSCG and PPA Buyer hereunder shall be wired to such Assigned PPA Payments Account:

[_____]
ABA: [_____]
FBO: [_____]
FFC: [_____]

(b) MSCG and PPA Buyer Monthly Payments.

(i) MSCG shall make payment of the Delivered Product Payment Amount on the Custodial Agreement Payment Date for each Month of any Assignment Period.

(ii) For each Month of any Assignment Period for which the Retained Payment Amount is a positive number, PPA Buyer shall make payment of such amount on the Custodial Agreement Payment Date. For each Month of any Assignment Period for which the Retained Payment Amount is a negative number, PPA Buyer shall have no payment obligation for such Month and the Custodian will pay the absolute value of such amount to PPA Buyer consistent with Section 4(c)(ii).

(c) Transfers by Custodian.

(i) For any Month in an Assignment Period for which the Retained Payment Amount is a positive number, the Custodian shall withdraw the amounts on deposit in the Assigned PPA Payments Account to make payment of the Monthly Gross Amount on the Monthly Statement Payment Date by separate wire transfers to applicable PPA Seller of the amounts received from each of MSCG and PPA Buyer, respectively, and each wire transfer shall indicate whether the transfer is of amounts received from MSCG or PPA Buyer.

(ii) For any Month in an Assignment Period for which the Retained Payment Amount is a negative number, the Custodian shall withdraw amounts on deposit in the Assigned PPA Payments Account (A) first to make payment of the Monthly Gross Amount

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1 NTD: Custodian to provide wire instructions.
to the applicable PPA Seller in respect of each Monthly Statement on the relevant Monthly Statement Payment Date pursuant to the payment instructions set forth on Exhibit A; and (B) immediately thereafter to make payment of the absolute value of such Retained Payment Amount to PPA Buyer pursuant to the payment instructions set forth on Exhibit B. If the amounts on deposit in the Assigned PPA Payments Account are insufficient to pay the entirety of either such amounts, the Custodian shall apply the amounts available in the order specified in the preceding sentence.

(d) Amounts deposited in the Assigned PPA Payments Account shall be held in trust for the benefit of PPA Buyer until applied as set forth in Section 4(c) and Section 12, as applicable, and there is hereby granted to PPA Buyer a lien on and security interest in the Assigned PPA Payments Account pending such application. Except for any amounts due and payable to PPA Buyer pursuant to Section 4(c)(ii), the Custodian shall not be required to comply with any orders, demands, or other instructions from PPA Buyer with respect to the Assigned PPA Payments Account, including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, and PPA Buyer agrees that, except as set forth in Section 4(c)(ii), prior to the termination of this Agreement in accordance with the terms hereof, it shall have no right to direct the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, or to withdraw or otherwise obtain funds or other assets held in or credited to the Assigned PPA Payments Account, whether by order or instruction to the Custodian or otherwise.

(e) With respect to each Monthly Statement, to the extent MSCG has purchased Receivables (as defined in the Prepaid Agreement) for amounts owed by PPA Buyer for the Month to which such Monthly Statement relates, MSCG may, at its option, (i) notify the Custodian that it intends to transfer all or any portion of such Receivables to the PPA Seller, and (ii) reduce the Delivered Product Payment Amount by the face amount of such Receivables to be transferred. To the extent MSCG has notified the Custodian of its intent to transfer any such Receivables, MSCG shall cause such Receivables to be transferred to the PPA Seller not later than the relevant Monthly Statement Payment Date.

Section 5. Custodian. The Custodian shall have (a) no liability under any agreement other than this Agreement and the Assigned PPAs. The Custodian may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder in accordance with the terms hereof and believed by it to be genuine and to have been signed or presented by the proper Party or Parties. The Custodian shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Custodian shall have no duty to solicit any payments which may be due to it, or to take any action to compel MSCG or PPA Buyer to make the deposits required under Section 4. The Custodian shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Custodian’s gross negligence or willful misconduct was the primary cause of any loss to any other Party hereto. In connection with the execution of any of its powers or the performance of any of its duties hereunder, the Custodian may consult with counsel, accountants and other skilled persons selected and retained by it. The Custodian shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other
skilled persons, provided the Custodian exercised due care and good faith in the selection of such person. The permissive rights of the Custodian to take actions enumerated under this Agreement shall not be construed as duties. In the event that the Custodian shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other Parties hereto or by a final order or judgment of a court of competent jurisdiction. The Custodian may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpled assets or any action or non-action based on such declaratory judgment. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, incidental or consequential damages, losses or penalties of any kind whatsoever (including but not limited to lost profits), regardless of the form of action. The Custodian shall be responsible only for funds actually received by it for deposit into the Assigned PPA Payments Account, and the Custodian shall not be obliged to advance or risk its own funds to make any payments required hereunder. The Custodian shall have only those duties expressly set forth in this Agreement and no implied duties shall be read into this Agreement against the Custodian. The Parties hereto acknowledge and agree that the Custodian is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities or liabilities with respect to its services hereunder.

Section 6. Succession. The Custodian may resign and be discharged from its duties or obligations hereunder by giving not less than 30 days’ advance notice in writing of such resignation to the other Parties hereto specifying a date when such resignation shall take effect; and such resignation shall take effect upon the day specified in such notice unless a successor shall not have been appointed by the other Parties hereto on such date, in which event such resignation shall not take effect until a successor is appointed. The other Parties hereto shall use their commercially reasonable efforts to make such appointment in a timely fashion, provided that any custodian appointed in succession to the Custodian shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least $50,000,000 and shall be a bank with trust powers or trust company willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Agreement. Any corporation or association into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the Custodian’s corporate trust line of business may be transferred, shall be the Custodian under this Agreement without further act. Notwithstanding the foregoing, if no appointment of a successor Custodian shall be made pursuant to the foregoing provisions of this Section 6 within 30 days after the Custodian has given written notice to the other Parties of its resignation as provided in this Section 6, the Custodian may, in its sole discretion, apply to any court of competent jurisdiction to appoint a successor Custodian. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Custodian.

Section 7. Reimbursement. MSCG and PPA Buyer agree, jointly and severally (subject to the second proviso of this Section 7), to reimburse the Custodian and its directors, officers, agents and employees for any and all loss, liability or expense (including the fees and
expenses of in-house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (a) its acting as the Custodian under this Agreement, except to the extent that such loss, liability or expense is finally adjudicated to have been caused primarily by the gross negligence or willful misconduct of the Custodian or such director, officer, agent or employee seeking reimbursement, or (b) its following any instructions or other directions from MSCP or PPA Buyer, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof; provided, however, that any amounts due under this Section 7 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 13 hereof; provided further, however, that, notwithstanding the joint and several nature of the obligations under this Section 7, any amounts due under clause (b) of this sentence resulting from instructions or directions that are not expressly provided for in this Agreement and are given to the Custodian by only one Party shall be the sole obligation of such Party. The Parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 8. Taxpayer Identification Numbers; Tax Matters. MSCP and PPA Buyer represent that their correct taxpayer identification numbers assigned by the Internal Revenue Service or any other taxing authority is set forth on the signature page hereof. Any tax returns or reports required to be prepared and filed in connection with the Assigned PPA Payments Account will be prepared and filed by PPA Buyer, and the Custodian shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned on the Assigned PPA Payments Account. In addition, any tax or other payments required to be made pursuant to such tax return or filing shall be paid by PPA Buyer. The Custodian shall have no responsibility for making such payment unless directed to do so by the appropriate authorized Party.


(a) Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service); provided that, if a Party delivers a notice, demand or request by any means other than email transmission, such notice shall not be effective unless and until the Party also delivers a copy thereof to the other Party’s email address specified in Exhibit B. Each Party shall have the right, upon 10 days’ prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods, such as electronic mail. Notwithstanding the foregoing, any Party may at any time notify the others that any notice, demand, statement or request to it must be provided by email transmissions for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.
(b) Exhibit A shall include each PPA Seller’s notice and payment information as set forth in the Assigned PPAs, and MSCG and PPA Buyer promptly shall cause such information to be updated to the extent there are any changes to such information under the Assigned PPAs.

Section 10. Miscellaneous.

(a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the Parties hereto.

(b) Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party, except as provided in Section 6, without the prior written consent of the other Parties.

(c) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF THE LAWS ANOTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE AUTHORITY OF PPA Buyer TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE.

(d) EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF (A) THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN, (B) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK OR (C) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA IN ANY OTHER STATE. THE PARTIES FURTHER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT.

(e) No Party to this Agreement shall be liable to any other Party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control; provided that a Party affected by any such event shall exercise commercially reasonable efforts to resume performance as quickly as possible.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by digital pdf transmission, and such facsimile or pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

(g) The Custodian shall not be under any obligation to invest or pay interest on amounts held in the Assigned PPA Payments Account from time to time.
(h) Issuer shall have only such duties under this Agreement as are expressly set forth herein as duties on its part to be performed, and no implied duties shall be read into this Agreement against Issuer.

Section 11. Compliance with Court Orders. In the event that any amount held by the Custodian hereunder shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, the Custodian is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing are binding upon it, whether with or without jurisdiction, and in the event that the Custodian obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree may be subsequently reversed, modified, annulled, set aside or vacated.

Section 12. Term; Winding Up. This Agreement will expire concurrently with the receipt of written notice from PPA Buyer, with a copy to the other Parties, that the Power Supply Agreement has terminated in accordance with its terms. Following the Custodian’s payment of any Monthly Gross Amount due in respect of the final Month of power deliveries prior to such a termination, any remaining balance in the Assigned PPA Payments Account shall be paid to PPA Buyer.

Section 13. Indemnification. MSCG and PPA Buyer, jointly and severally, agree to protect, indemnify, defend and hold harmless, the Custodian, and affiliates, and each person who controls the Custodian (and each of their respective directors, officers, agents and employees) from and against all claims, losses, liabilities, actions, suits, costs, judgments and expenses (including court costs and reasonable attorneys’ fees) arising from its acting as Custodian hereunder (including, for the avoidance of doubt, any costs, expenses and reasonable attorneys’ fees incurred in enforcing any payment obligation of an indemnifying Party), except for any claim, damage or loss resulting from the gross negligence or willful misconduct of the Custodian; provided, however, that any amounts due under this Section 13 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 7 hereof. The obligations of this Section 13 shall survive any resignation or removal of the Custodian and the termination of this Agreement. In addition, notwithstanding anything herein to the contrary, the Custodian and Issuer shall have all of the rights (including the indemnification rights), benefits, privileges and immunities under this Agreement as are granted to Issuer under the Bond Indenture, all of which are incorporated, mutatis mutandis, into this Agreement.

Section 14. Patriot Act. MSCG and PPA Buyer acknowledge that the Custodian is subject to federal laws, including the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Custodian must obtain, verify and record information that allows the Custodian to identify MSCG and PPA Buyer. Accordingly, prior to opening the Assigned PPA Payments Account described in Section 4 of this Agreement, the Custodian will ask MSCG and PPA Buyer to provide certain information including but not limited to name, physical address, tax identification number and other information that will help the Custodian identify and verify MSCG’s and PPA Buyer’s identities, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information.
information. MSCG and PPA Buyer agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies MSCG’s and PPA Buyer’s identities in accordance with its CIP.

[Signature Pages Follow]
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

[PPA BUYER]

By: ______________________________
    Name: __________________________
    Title: ___________________________
    Taxpayer ID Number: _____________

MORGAN STANLEY CAPITAL GROUP INC.

By: ______________________________
    Name: __________________________
    Title: ___________________________
    Taxpayer ID Number: _____________

[CUSTODIAN]

By: ______________________________
    Name: __________________________
    Title: ___________________________
EXHIBIT A

ASSIGNED PPAS

[To come.]
EXHIBIT B

NOTICE INFORMATION

[To come.]
PREPAID ENERGY SALES AGREEMENT

between

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

and

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

Dated as of [____], 2021
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Exhibit F - Pricing and Other Terms  
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PREPAID ENERGY SALES AGREEMENT

This Prepaid Energy Sales Agreement (hereinafter “Agreement”) is made and entered into as of [____], 2021 (the “Execution Date”), by and between Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (“Seller”), and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Buyer”).

WITNESSETH:

WHEREAS, Seller desires to sell electricity to Buyer, and Buyer desires to purchase electricity from Seller, upon the terms and conditions hereinafter set forth; and

WHEREAS, concurrently with Buyer’s execution of the Power Supply Contracts (as defined below), the Project Participants (as defined below) under such Power Supply Contracts will assign to Seller certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be resold to Buyer hereunder and then resold to the Project Participants under the Power Supply Contracts.

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Buyer and Seller (the “Parties” hereto; each is a “Party”) agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“Affiliate” means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, “control” of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

“Agreement” has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

“Assigned Delivery Point” has the meaning specified in the applicable Assignment Agreement.
“Assigned Energy” has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

“Assigned Product” means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

“Assigned RECs” means any RECs to be delivered to MSCG or Seller pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” means a portion of a Project Participant’s rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

“Assignment Agreements” mean the Initial Assignment Agreements and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreements.

“Assignment Letter Agreements” means those certain Letter Agreements, dated as of the date hereof, by and among MSCG, Seller, Buyer and each Project Participant.

“Automatic Non-Default Termination Event” has the meaning specified in Section 17.3(b).

“Available Discount” has the meaning specified in the Re-Pricing Agreement.

“Balancing Authority” has the meaning specified in the CAISO Tariff.

“Base Energy” means Firm (LD) Energy to be delivered to an Energy Delivery Point.

“Billing Statement” has the meaning specified in Section 14.1(b).

“Bond Closing Date” means the first date on which the Bonds are issued pursuant to the Bond Indenture.

“Bond Documents” means this Agreement, the Power Supply Contracts, the Bond Indenture and all other documents, agreements and instruments entered into or delivered by Buyer in connection with any of the foregoing or the transactions thereunder.

“Bond Indenture” means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Buyer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Buyer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.
“Bonds” means the bonds issued pursuant to the Bond Indenture.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

“Buyer” has the meaning specified in the preamble.

“Buyer Custodial Agreement” means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among the Swap Counterparty, Buyer, the Trustee and [____], as custodian, as the same may be amended, modified or supplemented from time to time.

“Buyer Default” has the meaning specified in Section 17.2.

“Buyer Swap” means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Buyer and the Swap Counterparty, and (ii) each replacement Buyer Swap entered into pursuant to Section 17.5.

“Buyer’s Statement” has the meaning specified in Section 14.1(a).

“CAISO” means California Independent System Operator or its successor.

“CAISO Tariff” means CAISO’s FERC-approved tariff, as modified, amended or supplemented from time to time.

“California Long-Term Contracting Requirements” means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

“Call Option Notice” has the meaning specified in Exhibit G.

“Claiming Party” has the meaning specified in Section 11.1.

“Claims” means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.
“Contract Fixed Price” means the fixed prices set forth in the Initial Assignment Agreements.

“Contract Index Price” means the index price specified on Exhibit A-1 with respect to the Hourly Quantity of Energy (which index prices may be Day-Ahead Market Price or Real-Time Market Price).

“Contract Quantity” means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in Exhibit A-2 for such Month and (ii) the Hourly Quantity of Base Energy set forth in Exhibit A-1 for such Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.

“Custodial Agreements” means the Buyer Custodial Agreement and the Seller Custodial Agreement.

“Daily Basis Differential” has the meaning specified in Section 18.11(a)(ii).

“Daily Commodity Reference Price” means (A) the Day-Ahead Market Price, (B) the Day-Ahead Average Price or (C) the Real-Time Market Price.

“Daily Replacement Index” has the meaning specified in Section 18.11(a)(ii).

“Day-Ahead Average Price” means, for any Assigned Energy after the Initial EPS Energy Periods, the weighted average Day-Ahead Market Price for each Month during the applicable EPS Energy Period, with such weighted average calculated in accordance with the weighting set forth in Exhibit A-3; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh.

“Day-Ahead Market Price” means the Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Day-Ahead Market Price hereunder be less than $0.00/MWh.

“Default Rate” means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the “Money Rates” section as the “Prime Rate” for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

“Delivery Hours” means each Hour beginning at [___] PPT on the first day of the Delivery Period and ending at the end of the last Hour in the Delivery Period.

“Delivery Period” has the meaning specified in Exhibit F.

“Delivery Point” means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).
“Early Termination Date” means a date designated pursuant to Section 17.4(a) or Section 17.4(b) upon which the Delivery Period will end and Buyer’s and Seller’s respective obligations to receive and deliver Energy under this Agreement will terminate.

“Early Termination Payment Date” has the meaning specified in Section 17.4(d).

“EBCE” means East Bay Community Energy Authority, a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

“Energy Delivery Point” has the meaning specified in Exhibit A-1.

“Energy Project” has the meaning specified in the Bond Indenture.

“EPS” means California’s Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“EPS Compliant Energy” means Energy that a Project Participant can contract for and purchase in compliance with EPS requirements that are applicable to such Project Participant.

“EPS Energy Period” means the Initial EPS Energy Periods and any subsequent EPS Energy Periods established by future assignments of power purchase agreements consistent with the Assignment Letter Agreements.

“Execution Date” has the meaning specified in the preamble.

[“Failed Remarketing” has the meaning specified in the Bond Indenture.]

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Firm (LD)” means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article IV.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell any Energy purchased...
hereunder; (iii) the loss or failure of Seller’s supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Seller’s ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party (or an upstream supplier with respect to Seller or a Project Participant with respect to Buyer) has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Energy Delivery Point and (b) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of Seller hereunder; and (II) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Seller until the earlier of (A) the commencement of an “Assignment Period” under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

“Government Agency” means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

“Governmental Approval” means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, or similar action by any Government Agency relating to the execution, delivery or performance of this Agreement as any of the foregoing are in effect as of the Execution Date.

“Hour” means each 60-minute period commencing at [____] PPT on the first day of the Delivery Period. The term “Hourly” shall be construed accordingly.

“Hourly Quantity” means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

“Initial Assignment Agreements” mean (i) that certain Partial Assignment Agreement, dated as of the date hereof, by and among EBCE and [MSCG/[Seller]1 and [____], and (ii) that certain Partial Assignment Agreement, dated as of the date hereof, by and among SVCE and [MSCG/[Seller] and [____]. [NOTE: This definition and others relating to the

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1 NTD: MSES will be party to an assignment agreement if MSCG is the PPA Supplier, but MSCG will be party to an assignment agreement to the extent a PPA Supplier is an unrelated third party.
initial PPA assignments will be updated as appropriate if a CCA makes multiple PPA assignments at the outset.]

“Initial EPS Energy Periods” means the [“EPS Energy Period” as defined in each of the Initial Assignment Agreements].

“Initial PPA Suppliers” mean (i) [_____], a [_____] for EBCE and (ii) [_____], a [_____] for SVCE.

[“Interest Rate Period” has the meaning specified in the Bond Indenture], provided that if the Bonds are outstanding in two or more series with separate, concurrent and co-terminus Interest Rate Periods, “Interest Rate Period” shall mean all such Interest Rate Periods collectively.

[“Interest Rate Swap” has the meaning specified in the Bond Indenture.]”

“Law” means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

“Long-Term PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

[“Mandatory Purchase Date” has the meaning specified in the Bond Indenture.]”

“Minimum Discount” has the meaning specified in the Power Supply Contracts.

“Month” means a calendar month. The term “Monthly” shall be construed accordingly.

“Monthly Quantity” means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

“Morgan Stanley” means Morgan Stanley, a Delaware corporation.

“Morgan Stanley Guarantee” means a guarantee of Morgan Stanley of Seller’s payment obligations under this Agreement in the form attached hereto as Exhibit E.

“MSCG” means Morgan Stanley Capital Group Inc., a Delaware corporation.

“MWh” means megawatt-hour.

“Optional Non-Default Termination Event” has the meaning specified in Section 17.3(a).

“Party” has the meaning specified in the recitals.
“PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

“Person” means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

“Portfolio Content Category 1” means any Renewable Energy Credit associated with the generation of electricity from an “Eligible Renewable Energy Resource” consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

[“Power Supply Contract” has the meaning specified in the Bond Indenture.]

“PPA Supplier” means the Initial PPA Suppliers and any subsequent supplier who enters into an Assignment Agreement consistent with the Assignment Letter Agreements.

“PPT” means Pacific Daylight Time when such time is applicable and otherwise means Pacific Standard Time.

“Prepayment” means the amount specified in Exhibit F.

“Prepayment Outside Date” means the date specified in Exhibit F.

“Project Participant” has the meaning specified in the Bond Indenture.

“PSC Remarketing Election” means, with respect to any Power Supply Contract, that the relevant Project Participant delivered a [Remarketing Election Notice (as defined thereunder)] for any Reset Period.

“Put Option Notice” has the meaning specified in Exhibit G.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Buyer and Seller.

“Real-Time Market Price” means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Real-Time Market Price hereunder be less than $0.00/MWh.

“Remarketing Non-Default Termination Event” has the meaning specified in Exhibit C.

“Remarketing Notice” has the meaning specified in Exhibit C.
“Renewable Energy Credit” or “REC” has the meaning specified for “Renewable Energy Credit” in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Repurchase Offer” has the meaning specified in Exhibit G.

“Reset Period” means each “Reset Period” under the Re-Pricing Agreement.

“Schedule”, “Scheduled” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

“Seller” has the meaning specified in the preamble.

“Seller Custodial Agreement” means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among the Swap Counterparty, Seller, the Trustee and [____], as custodian, as the same may be amended, modified or supplemented from time to time.

“Seller Default” has the meaning specified in Section 17.1.

“Seller Specified Termination” has the meaning specified in Section 17.5.

“Seller Swap” means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Seller and the Swap Counterparty, and (ii) each replacement Seller Swap entered into pursuant to Section 17.5.

“Specified Discount” means the amount specified in Exhibit F.

“Specified Fixed Price” means the amount specified in Exhibit F.

“Specified Investment Agreement” means a guaranteed investment contract between the Trustee and a provider concerning the investment of funds in the [Debt Service Account] (as defined in the Bond Indenture).

“SVCE” means Silicon Valley Clean Energy Authority, a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code.

“Swap Counterparty” means [_____], a [_____], and any other Person that becomes counterparty to Buyer under a Buyer Swap or to Seller under a Seller Swap, in each case pursuant to Section 17.5.

“Swap Replacement Period” has the meaning specified in Section 17.5(a).

“Terminating Party” means any Party that has the right to terminate this Agreement pursuant to Article XVII.
“Termination Payment” means, with respect to any Early Termination Payment Date, the amount specified on Exhibit D for the calendar month in which such Early Termination Payment Date occurs (as adjusted by any applicable Termination Payment Adjustment Amount) without any set-off or netting of amounts then due from Buyer.

“Termination Payment Adjustment Amount” means, with respect to any Early Termination Payment Date, the amount specified on Exhibit D-1 for the calendar month in which such Early Termination Payment Date occurs. For the avoidance of doubt, the Termination Payment Adjustment Amount for the period commencing on the Execution Date is zero (0).

“Termination Payment Adjustment Schedule” means the schedule of Termination Payment Adjustment Amounts set forth in Exhibit D-1, as such exhibit may be populated and amended from time to time in accordance with Section 17.8.

“Transaction Documents” has the meaning specified in Article XIII.

“Transmission Provider(s)” means any entity or entities transmitting or transporting Energy on behalf of Seller or Buyer to or from an Energy Delivery Point.

“Trustee” means [____], and its successors as Trustee under the Bond Indenture.

“WREGIS” means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to “Articles,” “Sections,” “Schedules” and “Exhibits” shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

ARTICLE II.
EXECUTION DATE AND DELIVERY PERIOD

Section 2.1 Execution Date; Delivery Period. This Agreement shall become effective upon the Execution Date and, unless this Agreement is terminated early pursuant to Section 2.2, all of Seller’s and Buyer’s obligations under this Agreement shall be deemed to have been incurred upon the Execution Date. Unless this Agreement is terminated pursuant to Section
2.2, then, upon receipt of the Prepayment, the delivery of Energy under this Agreement shall commence and continue for the Delivery Period, unless an Early Termination Date occurs.

Section 2.2 Termination by Seller Prior to Prepayment. Seller shall have no obligation to perform under this Agreement unless and until it has received the Prepayment from Buyer pursuant to Section 3.2. In the event Seller has not received the Prepayment prior to noon local time in New York, New York on the Prepayment Outside Date, Seller shall have the right, until such Prepayment has been paid, to terminate this Agreement without any further obligation or liability of either Party: provided that, for the avoidance of doubt, in the event Seller so terminates, such termination shall be effective upon the Prepayment Outside Date regardless of whether Buyer tenders the Prepayment after Seller’s notice of termination but prior to the Prepayment Outside Date. For the avoidance of doubt, no Termination Payment shall be payable by Seller under any circumstances if this Agreement terminates pursuant to this Section 2.2.

ARTICLE III.
SALE AND PURCHASE

Section 3.1 Sale and Purchase of Energy. Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to take or cause to be taken from Seller, in each case, on a Firm (LD) basis, the Contract Quantity pursuant to the terms and conditions set forth in this Agreement. [Energy delivered to Buyer under this Agreement shall be re-delivered to the Project Participants on a fixed price basis during the Initial EPS Energy Periods and on a floating price basis thereafter.]

Section 3.2 Prepayment. Prior to the commencement of the Delivery Period, Buyer shall pay Seller for all Energy to be delivered during the Delivery Period in an amount equal to the Prepayment, and Seller shall accept the Prepayment as payment in full for all Energy to be delivered hereunder. Buyer shall pay the Prepayment in a single lump sum payment by wire transfer of immediately available funds to an account designated by Seller. In no event shall Buyer be entitled to any rebate or refund of the Prepayment, but nothing in this Section 3.2 shall limit Buyer’s rights under (i) Article IV for Seller’s failure to deliver Energy (whether or not excused), (ii) Article XVII upon early termination of this Agreement or (iii) Exhibit C with respect to remarketing of Energy in accordance therewith. In no event shall Buyer be required to pay the Prepayment unless and until the Bonds are issued in exchange for a purchase price sufficient to pay costs of issuance, to fund required reserves under the Bond Indenture (or purchase surety bonds or enter into any similar arrangements in lieu of funding such reserves), and to pay the Prepayment.

Section 3.3 No Obligation to Take Base Energy. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to purchase and receive any Base Energy hereunder, and Seller shall remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C.

Section 3.4 Reduction of Contract Quantity. The Parties recognize and agree that the Contract Quantity may be reduced in a Reset Period pursuant to the re-pricing

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2 HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.
methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Buyer and the [Calculation Agent] (as defined therein) determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (B) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

**ARTICLE IV.**

**FAILURE TO DELIVER OR TAKE ENERGY**

**Section 4.1**  **Assigned Product.** Notwithstanding anything herein to the contrary, neither Seller nor Buyer shall have any liability or other obligation to one another under this Agreement for any failure to Schedule, take, or deliver Assigned Product other than as set forth in (a) Section 5(a) of Exhibit C for any failure to Schedule, take or deliver not due to Force Majeure and (b) Section 4.2 regarding a failure to Schedule, take or deliver due to Force Majeure.

**Section 4.2**  **Failure to Deliver or Take Due to Force Majeure.** If with respect to all or any portion of the Contract Quantity (including any Base Energy or Assigned Energy):

(a) Buyer fails to take or Seller fails to deliver all or any portion of the Contract Quantity at any Delivery Point pursuant to the terms of this Agreement; and

(b) such failure is due to Force Majeure claimed by either Party,

then Seller shall pay to Buyer the result determined by the following formula with respect to each such Delivery Point:

\[ P = Q \times IP \]

Where:

\[ P = \text{The amount payable by Seller under this Section 4.2;} \]
\[ Q = \text{The quantity of Energy described in the lead-in to this Section 4.2;} \]
\[ IP = \text{(i) The Contract Index Price applicable to such Delivery Hour and Energy Delivery Point for Assigned Energy or (ii) the Contract Fixed Price during the Initial EPS Energy Periods and thereafter the Day-Ahead Average Price for Assigned Energy.} \]

**ARTICLE V.**

**TRANSMISSION AND DELIVERY; COMMUNICATIONS**

**Section 5.1**  **Delivery of Energy.**
(a) **Assigned Product.** All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

(b) **Updates to Exhibits.** Buyer and Seller may, upon mutual agreement, update Exhibit A-1 to modify the Delivery Points thereunder, provided that the Parties shall promptly notify any Swap Counterparty of any such updates and furthermore shall update the corresponding exhibits to any Buyer Swap and any Seller Swap in accordance with the terms thereof. Furthermore, following the Initial EPS Energy Periods and thereafter in connection with the establishment, expiration or termination of any subsequent EPS Energy Period, the Parties shall update (i) the exhibits hereof in accordance with Section 6.2 and (ii) the exhibits to any Buyer Swap and any Seller Swap in accordance with the terms thereof. For the avoidance of doubt, such updates will reflect that deliveries will be made to (A) the Energy Delivery Point at the Day-Ahead Market Price for any Base Energy and (B) an Assigned Delivery Point at the Day-Ahead Average Price for any Assigned Energy.

Section 5.2 **Scheduling.** Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Section 5.3 **Title and Risk of Loss.** The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.

Section 5.4 **Deliveries within CAISO or Another Balancing Authority.** The Parties acknowledge that Energy delivered by Seller at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Balancing Authority shall constitute delivery of such Energy to Buyer, provided that any Assigned Products associated with the Energy are also delivered to Buyer hereunder.

ARTICLE VI.
PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 **Future PPA Assignments.** Subsequent to the Initial EPS Energy Periods, each Project Participant, Seller, Buyer and MSCG shall cooperate to obtain EPS Compliant Energy for delivery hereunder in accordance with the Assignment Letter Agreements.

Section 6.2 **Updates to Exhibits A-1 and A-2.**

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities of Base Energy and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities of
Assigned Energy thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect (i) appropriate decreases in the Hourly Quantities of Base Energy and increases in the Monthly Quantities of Assigned Energy and (ii) any other changes in connection therewith.

ARTICLE VII.
ENERGY REMARKETING

If (a) a Project Participant is in default under its Power Supply Contract or does not require or is unable to receive all or any portion of the Energy purchased by Buyer under this Agreement as a result of (i) a Project Participant’s decreased Energy requirements, (ii) decreased demand by a Project Participant’s retail customers and its request that such Energy be remarketed or (iii) EPS Compliant Energy not being available for delivery hereunder; or (b) a quantity of Assigned Energy less than the Monthly Quantity is delivered hereunder in any Month for any reason, then Buyer shall request (and pursuant to Exhibit C may be deemed to request) remarketing services from Seller pursuant to the provisions of Exhibit C.

ARTICLE VIII.
REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and WARRANTIES. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) it is duly organized and validly existing under the Laws of the state in which it is organized;

(b) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(c) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party’s knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(d) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(e) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such
enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights generally and by general principles of equity;

(f) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(g) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Buyer, the lien of the Bond Indenture;

(h) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(i) it enters this Agreement as a bona-fide, arm’s-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Additional Representations and Warranties of Buyer. As a material inducement to entering into this Agreement, Buyer hereby represents and warrants to Seller as of the Execution Date as follows:

(a) Buyer is entering into this Agreement for the purpose of acquiring Energy for sale to its Project Participants pursuant to the Power Supply Contracts;

(b) any amounts payable by Buyer under this Agreement shall (i) other than the Prepayment, be payable as an item of [Operating Expense] under (and as defined in) the Bond Indenture, and (ii) not constitute an indebtedness or liability of Buyer within the meaning of any constitutional or statutory limitation or restriction applicable to Buyer;

(c) Buyer will promptly alert Seller of any notice received by Buyer alleging a breach under the Bond Indenture or of any covenant of Buyer in the agreements entered into by Buyer in connection with the Energy Project;

(d) Buyer shall not (i) enter into any Bond Documents (excluding any contracts applicable to Energy being resold by Buyer or a Project Participant (or a related joint powers authority selling Energy to a Project Participant)), (ii) consent to, waive or agree to or
permit any material amendment to or rescission of any such Bond Documents or (iii) consent to, waive or agree to permit any amendment (whether or not material) to or rescission of the Bond Indenture, in each case, without the prior written consent of Seller;

(e) Buyer shall collect and forthwith cause to be deposited in the relevant funds pursuant to the Bond Indenture all amounts payable to it pursuant to the Power Supply Contracts. Buyer shall enforce the provisions of the Power Supply Contracts, as well as any other contract or contracts entered into relating to the Energy Project, and duly perform its covenants and agreements thereunder. Buyer shall not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with any Power Supply Contract which will impair the ability of Buyer to pay all of its debts and obligations as they come due; provided that this provision shall not prevent Buyer from otherwise taking any action under or in connection with the Power Supply Contracts which is expressly permitted pursuant to the provisions thereof. A copy of each Power Supply Contract and any amendment thereto certified by an authorized officer of Buyer shall be provided to Seller. Buyer shall not enter into any new Power Supply Contracts following the Bond Closing Date without the prior written consent of Seller;

(f) Buyer shall keep or cause to be kept with respect to the Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of the Bond Indenture, in which complete and correct entries shall be made of its transactions relating to the Energy Project, the amount of revenues and the application thereof and each fund and account established under the Bond Indenture and relating to its costs and charges under the Power Supply Contracts and any other contracts for the sale or purchase of Energy, and which, together with all contracts and all other books and papers of Buyer relating to the Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of Seller;

(g) Buyer shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of Buyer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of Buyer when the same shall become due, and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which Buyer shall in good faith contest by proper legal proceedings if Buyer shall in all such cases have set aside on its books reserves deemed adequate by Buyer with respect thereto;

(h) Buyer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to maintain its existence; and

(i) Buyer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to, or reorganize, reincorporate or reconstitute into or as, another entity unless (i) prior to such event, Buyer receives confirmation from Seller that such event does not trigger a termination event under this Agreement or the Buyer Swap and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of Buyer under this Agreement and the Buyer Swap.
Section 8.3  Warranty of Title. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY SELLER IN THIS ARTICLE VIII, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IX.
TAXES

Seller shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Points, and (ii) indemnify Buyer and its Affiliates for any such taxes paid by Buyer or its Affiliates. Buyer shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Points, and (ii) indemnify Seller and its Affiliates for any such taxes paid by Seller or its Affiliates.

ARTICLE X.
DISPUTE RESOLUTION

Section 10.1  Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “chairperson”) within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys’ fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection
with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2  Dispute Resolution.

(a)  Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “Dispute”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), or their successor sections (a “Reference Proceeding”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b)  Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the “Disputing Party”) shall provide the other Party (the “Responding Party”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “Notice of Dispute”). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “Dispute Response”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the “Negotiation Period”), then either Party may provide to the other Party written notice of intent for judicial reference (the “Impasse Notice”) in accordance with the further provisions of this Section 10.2.

(c)  Applicability; Selection of Referees.

(i)  The Party that provides the Impasse Notice shall nominate one referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two referees (the “Party-Appointed Referees”) shall appoint a third referee (the “Third Referee”, together with the Party-Appointed Referees, the “Referees”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.
(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “Court”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery: Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
(f) **Expenses.** Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

**ARTICLE XI.**

**FORCE MAJEURE**

Section 11.1 **Applicability of Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party’s non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 **Settlement of Labor Disputes.** Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

**ARTICLE XII.**

**GOVERNMENTAL RULES AND REGULATIONS**

Section 12.1 **Compliance with Laws.** This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; provided, however, that nothing herein shall be construed to restrict or limit either Party’s right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 **Contests.** Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 **Defense of Agreement.** Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this
Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII.
ASSIGNMENT

Neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however, that:

(a) pursuant to the Bond Indenture, Buyer may, without the consent of Seller, transfer, sell, pledge, encumber or assign this Agreement to the Trustee in connection with any financing or other financial arrangements; provided that Buyer shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Buyer also assigns the Buyer Swap (and the Buyer Custodial Agreement) to the same assignee;

(b) With the prior written consent of Buyer, not to be unreasonably withheld, Seller may assign this Agreement to an Affiliate of Seller, provided that the Morgan Stanley Guarantee continues to apply to the obligations of such assignee hereunder or the assignee provides to Buyer a parent guarantee and a [Rating Confirmation] (as defined in the Bond Indenture), which assignment shall constitute a novation; provided that, Seller shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Seller also assigns the Seller Swap (and the Seller Custodial Agreement) to the same assignee; and

(c) if either (A) Seller notifies Buyer that the Morgan Stanley Guarantee will be terminated as of the end of any Interest Rate Period; (B) Seller is unable to provide, under the Re-Pricing Agreement, an estimated [Available Discount] (as defined in the Re-Pricing Agreement) that is equal to or greater than the Minimum Discount under the Power Supply Contracts; (C) the circumstances set forth in [Section 5(c)(iii)] of the Re-Pricing Agreement regarding replacement of Seller with an Alternative Supplier (as defined in the Re-Pricing Agreement) apply; or (D) both (1) Seller has agreed under the Re-Pricing Agreement to provide an Available Discount equal to or greater than the Minimum Discount but for a Reset Period shorter than the entire remaining term to maturity of this Agreement and (2) Buyer has identified a potential assignee that has agreed to provide an Available Discount equal to or greater than the Minimum Discount for a Reset Period equal to the entire remaining term to maturity of this Agreement, then, at the request of Buyer, Seller will reasonably cooperate with Buyer to cause Seller’s (or Seller’s Affiliate’s, if applicable) right, title and interest in this Agreement, the Re-Pricing Agreement, the Seller Swap, the Seller Custodial Agreement, the Interest Rate Swap and any Specified Investment Agreement with a term that extends past the then-current Interest Rate Period to which Seller or any Affiliate is a party and all agreements related to any of the foregoing (the “Transaction Documents”) to be novated to a replacement seller; provided that (x) a [Rating Confirmation] (as defined in the Bond Indenture) is obtained for any Bonds required to be redeemed on the first Mandatory Purchase Date following the effective date of such novation, (y) the Swap Counterparty shall have provided its prior written consent to such assignment in accordance with the terms of the Seller Swap, and (z) after giving effect to such novation, neither Seller nor Morgan Stanley will have any obligations (contingent or otherwise, including any obligation to make or repeat any representations or warranties other than basic representations on authority and the right to transfer its rights, title and interests under this Agreement without encumbrances) or be required to make any payment under any Transaction
Document, the Morgan Stanley Guarantee or otherwise in connection with or following such novation other than any obligations that would have existed or payments that would have been required (or guaranteed) had this Agreement terminated as of the end of the last Reset Period that commenced prior to such novation.

ARTICLE XIV.
PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Buyer shall deliver to Seller a statement (a “Buyer’s Statement”) listing any other amounts due to Buyer in connection with this Agreement with respect to the prior Month(s).

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the “Billing Date”), Seller shall deliver a statement (a “Billing Statement”) to Buyer indicating (i) the total amount due to Buyer, if any, under Article IV, Article V, Article VII and Exhibit C with respect to the prior Month(s), (ii) any amounts due to Seller in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Buyer or Seller. If the actual quantity delivered is not known by the Billing Date, Seller may provisionally prepare a Billing Statement based on Seller’s best available knowledge of the quantity of Energy delivered, which shall not exceed the sum of the Contract Quantity of all Delivery Hours in such Month plus any make-up quantities delivered during such Month. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Buyer at the Default Rate) will then be adjusted on the following Month’s Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Buyer, then Buyer shall remit such amount to Seller by wire transfer (pursuant to Seller’s instructions), in immediately available funds, on or before the later of (i) the 25th day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10th day following Buyer's receipt of Seller’s Billing Statement, or if either such day is not a Business Day, the following Business Day. If the Billing Statement indicates an amount due from Seller, then Seller shall remit such amount to Buyer by wire transfer (pursuant to Buyer’s instructions), in immediately available funds, on or before the later of (i) the 22nd day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10th day following Seller’s receipt of Buyer’s Statement, or if either such day is not a Business Day, the preceding Business Day.

(b) If Buyer fails to issue a Buyer’s Statement with respect to any Month, Seller shall not be required to estimate any amounts due to Buyer for such Month, provided that Buyer may include any such amount on subsequent Buyer’s Statements issued within the next sixty
(60) days. The sixty (60)-day deadline in this subsection (b) replaces the two (2)-year deadline in Section 14.5 with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts. If Seller disputes any amounts included in the Buyer’s Statement, Seller shall (a) (except in the case of manifest error) nonetheless calculate the Billing Statement based on the amounts included in Buyer’s Statement and (b) pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Seller may have; provided, however, that Seller shall have the right, after payment, to dispute any amounts included in a Buyer’s Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5(b). If Buyer disputes any amounts included in the Billing Statement, Buyer may withhold payment to the extent of the disputed amount; provided, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

Section 14.4 Late Payment. If a Party owing a net payment under Section 14.2 fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Buyer’s Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Buyer’s Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within 30 days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on incorrect Buyer’s Statements or Billing Statements shall bear interest at the Default Rate from the date such payment was made. Buyer shall cause each Project Participant to comply with the provisions of Section 14.5(a) to the extent necessary to allow Seller to verify any amounts due under this Agreement.

Section 14.6 Netting. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest),
arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, Seller shall not be entitled to net (i) any amounts that are in dispute or (ii) any payments due to Seller against (A) the Termination Payment if it becomes due, or (B) any payments due from Seller pursuant to Article IV, Article V or Exhibit C.

**ARTICLE XV. RECEIVABLES PURCHASES**

In accordance with the provisions of Exhibit G, (i) Buyer shall put and Seller shall purchase certain [Receivables] (as defined in Exhibit G) from Buyer relating to payment defaults by the [Specified Project Participants] (as defined in Exhibit G), and (ii) Buyer shall offer and Seller shall have the option to purchase certain Receivables relating to payment defaults by the Project Participants.

**ARTICLE XVI. NOTICES**

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days’ prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

**ARTICLE XVII. DEFAULT; REMEDIES; TERMINATION**

Section 17.1 Seller Default. Each of the following events shall constitute a “Seller Default” under this Agreement:

(a) Seller fails to pay when due any amounts owed to Buyer pursuant to this Agreement and such failure continues for two Business Days after receipt by Seller of notice thereof, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;

(b) Seller: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is
presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Seller in this Agreement proves to have been incorrect in any material respect when made.

Section 17.2 Buyer Default. Each of the following events shall constitute a “Buyer Default” under this Agreement:

(a) Buyer fails to pay when due any amounts owed to Seller pursuant to this Agreement and such failure continues for five Business Days after receipt by Buyer of notice thereof;

(b) Buyer (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in
clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Buyer in this Agreement proves to have been incorrect in any material respect when made.

Section 17.3 Non-Default Termination Events.

(a) Each of the following events shall constitute an “Optional Non-Default Termination Event” under this Agreement:

<table>
<thead>
<tr>
<th>Termination Related to:</th>
<th>Optional Non-Default Termination Event:</th>
<th>Potential Terminating Party:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance Prohibited by Law</td>
<td>Any interpretation, enactment or change or amendment to any Governmental Approval or Law occurring after the Execution Date that results or would result in the performance of any obligation of Seller to deliver Energy or of Buyer to receive Energy under this Agreement being prohibited or unlawful.</td>
<td>Each of Buyer or Seller</td>
</tr>
</tbody>
</table>

| Termination of Interest Rate Swap by Buyer | Buyer designates an [Early Termination Date] (as defined in the Interest Rate Swap) pursuant to the terms of such Interest Rate Swap based on an Event of Default (as defined in such Interest Rate Swap) where Seller is the Defaulting Party. | Buyer |

| Termination of Interest Rate Swap by Buyer | Buyer designates an [Early Termination Date] (as defined in the Interest Rate Swap) pursuant to such Interest Rate Swap for any reason other than that specified in the immediately preceding Optional Non-Default Termination Event. | Buyer |

| PSC Remarketing Election | If all of the Project Participants make PSC Remarketing Elections for any Reset Period. | Seller |

| Termination of Power Supply Contracts | If all of the Power Supply Contracts have been terminated or are otherwise no longer in effect. | Seller |

(b) Each of the following events shall constitute an “Automatic Non-Default Termination Event” under this Agreement:
<table>
<thead>
<tr>
<th>Termination Related to:</th>
<th>Automatic Non-Default Termination Event:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of a Buyer Swap</td>
<td>Both (A) an [Early Termination Date] (as defined in the Buyer Swap) is designated pursuant to the terms of the Buyer Swap for any reason or occurs automatically pursuant to the terms of the Buyer Swap based on an Event of Default or Termination Event (as each term is defined in the Buyer Swap), and (B) either the Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period.</td>
</tr>
<tr>
<td>Termination of a Seller Swap for Seller Defaults and Termination Events</td>
<td>Both (A) an [Early Termination Date] (as defined in the Seller Swap) is designated by the Swap Counterparty pursuant to the terms of the Seller Swap or occurs automatically pursuant to the terms of the Seller Swap based on an Event of Default where Seller is the Defaulting Party or a Termination Event where Seller is the sole Affected Party (as each term is defined in the Seller Swap), but excluding any termination as a result of the termination of this Agreement based on (i) a Buyer Default under Section 17.2 or (ii) an Optional Non-Default Termination Event under Section 17.3(a) where Seller is the Terminating Party and (B) except in the case of a Seller Specified Termination (as defined in Section 17.5(a) hereof), either such Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period.</td>
</tr>
<tr>
<td>Termination of a Seller Swap for any Other Reason</td>
<td>Both (A) an Early Termination Date is designated pursuant to the terms of the Seller Swap for any reason other than as specified in the immediately preceding Automatic Non-Default Termination Event and (B) either such Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period.</td>
</tr>
<tr>
<td>Termination of Interest Rate Swap by Seller</td>
<td>Seller designates an [Early Termination Date] (as defined in the Interest Rate Swap) for any reason under the Interest Rate Swap.</td>
</tr>
<tr>
<td>Failed Remarketing</td>
<td>A Failed Remarketing has occurred.</td>
</tr>
<tr>
<td>Termination of Morgan Stanley Guarantee</td>
<td>Both (A) Morgan Stanley has delivered a termination notice of the Morgan Stanley Guarantee pursuant to the terms thereof, and (B) no assignment has been effected pursuant to clause (c) of Article XIII prior to the end of the Reset Period during which such termination notice was delivered.</td>
</tr>
<tr>
<td>Morgan Stanley Guarantee Ceases to be in Full Force and Effect</td>
<td>The Morgan Stanley Guarantee ceases to be in full force and effect or is declared to be null and void, or Morgan Stanley contests the validity or enforceability of the Morgan Stanley Guarantee; provided that, for avoidance of doubt, no such event will occur as a</td>
</tr>
</tbody>
</table>
Termination Related to: Automatic Non-Default Termination Event: 

consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding.

Remarketing Non-Default Termination Event

The occurrence of a Remarketing Non-Default Termination Event if, by the 90th day after such event, neither (i) Buyer and Seller have taken the actions described in Section 18.3(b), nor (ii) Buyer has otherwise received an [Opinion of Bond Counsel] (as defined in the Bond Indenture) that such event has not affected the tax-exempt status of the Bonds.

Section 17.4 Remedies and Termination.

(a) Default and Optional Non-Default Termination. If at any time a Seller Default or a Buyer Default has occurred and is continuing or an Optional Non-Default Termination Event has occurred and is continuing, then the Terminating Party, by notice to the other Party specifying the relevant Seller Default, Buyer Default or Optional Non-Default Termination Event, may designate a day not earlier than the day such notice is deemed given under Article XVI as the Early Termination Date; provided, however, that:

(i) an Early Termination Date shall occur as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence of a Seller Default specified in Section 17.1(b)(iv) or, to the extent analogous thereto, Section 17.1(b)(viii); and

(ii) with respect to an Optional Non-Default Termination Event related to the Buyer Swap, the Terminating Party may, at any time after the commencement of the Swap Replacement Period, conditionally designate an Early Termination Date, with such designation being conditioned upon (A) the termination and failure to replace either the Seller Swap or the Buyer Swap and (B) the Early Termination Date occurring no earlier than the end of such Swap Replacement Period.

(b) Automatic Non-Default Termination. The Early Termination Date shall occur automatically upon the occurrence of any Automatic Non-Default Termination Event; provided, however, in the case of an Automatic Non-Default Termination Event resulting from a termination of the Morgan Stanley Guarantee, the Early Termination Date will occur as of the end of the last day in the then-current Reset Period.

(c) Effect of Early Termination. As of the Early Termination Date, (i) the Delivery Period shall end, (ii) the obligation of Seller to make any further deliveries of Energy to Buyer under this Agreement shall terminate, and (iii) the obligation of Buyer to receive deliveries of Energy from Seller under this Agreement will terminate.

(d) Early Termination Payment Date. (i) In the case of a Failed Remarketing, the last Business Day of the then-current Interest Rate Period, and (ii) in each other case, on the
last Business Day of the first Month that commences after the Early Termination Date (the “Early Termination Payment Date”), Seller shall pay the Termination Payment to the Trustee pursuant to payment instructions issued by Buyer or, in the absence of such instructions, by wire transfer. Such amounts shall be paid together with interest thereon (before as well as after judgment) from (and including) the Early Termination Payment Date to (but excluding) the date such amount is paid, at the Default Rate. The Parties acknowledge that it is impractical and difficult to assess actual damages as a result of a termination of this Agreement, and the Parties therefore agree that the payment of the Termination Payment is a fair and reasonable pre-estimate of the actual damages that would be incurred by Buyer as a result of termination of this Agreement for any reason and is not a penalty. The obligation of Seller to pay the Termination Payment on the Early Termination Payment Date is unconditional, irrespective of the validity or enforceability of this Agreement or any other agreement contemplated hereby, any waiver or consent by Buyer or any other circumstances that might otherwise constitute a legal or equitable discharge of Seller or a defense of Seller to pay the Termination Payment. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller’s obligation to pay the Termination Payment on the Early Termination Payment Date.

(e) Exclusive Termination Rights. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII and in Section 2.2. Except with respect to amounts due for periods prior to termination, the payment of the Termination Payment shall be the sole and exclusive remedy for each Party upon the termination of the Delivery Period and this Agreement for any reason, including as a result of rejection of this Agreement by either Party in any bankruptcy proceedings.

Section 17.5 Replacement of Swaps.

(a) In the event that (i) any Buyer Swap or any Seller Swap terminates, (ii) any notice of termination is delivered by any party to a Buyer Swap or a Seller Swap, or (iii) any Buyer Swap or Seller Swap is otherwise reasonably anticipated to become subject to immediate termination, in each case for any reason other than a Seller Specified Termination or insolvency of either Buyer or Seller, then each Party whose swap is affected shall notify the other Party and the Parties shall cooperate in good faith for a period of 120 days (commencing no later than the date on which any notice of termination (or anticipated termination) is delivered by any party to a Buyer Swap or a Seller Swap) (such period, the “Swap Replacement Period”) to (x) cause the same Swap Counterparty whose Buyer Swap or Seller Swap has been terminated (or is anticipated to terminate) to terminate its unaffected Seller Swap or Buyer Swap, as applicable, and (y) locate replacement agreements with an alternate Swap Counterparty, to be mutually agreed upon by Buyer and Seller, to replace both the affected swap and the unaffected swap; provided, however, that neither Party shall be required to breach any obligation under the unaffected swap or to expend any amounts to cause the unaffected swap to be replaced or to cause an alternate counterparty to replace both swaps. Neither Party shall terminate this Agreement as a result of the termination of any Seller Swap or any Buyer Swap without first complying with this Section 17.5.

As used in this Section 17.5, the term “Seller Specified Termination” means a termination or potential termination of the Seller Swap due to (i) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller pursuant to [Section 5(a)(i) or 5(a)(iii)] of the Seller Swap, in either case other than where (A) any such failure to pay or transfer was caused
solely by error or omission of an administrative or operational nature; (B) funds were available to enable Seller to make such payment or transfer when due; and (C) such payment or transfer is made within two (2) Business Days of Seller’s receipt of written notice of its failure to pay or transfer, or (ii) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller under [Section 5(a)(viii)] of the Seller Swap.

(b) In the event of a termination (or anticipated termination) of the Seller Swap, if Seller (i) presents to Buyer a proposed alternate Swap Counterparty, (ii) requests in writing that Buyer enter into a replacement swap with such alternate Swap Counterparty, and (iii) agrees to pay Buyer’s reasonable expenses in connection therewith, Buyer shall (y) enter into a master agreement with such alternate Swap Counterparty and (z) either (A) terminate the Buyer Swap when permitted thereby and enter into a replacement transaction under such new master agreement to the same effect as the terminated Buyer Swap or (B) cause such Buyer Swap to be novated to such replacement Swap Counterparty, provided that, in each instance, such replacement Swap Counterparty, replacement master agreement and replacement transaction meet the requirements specified for such under the Bond Indenture. Buyer shall not replace a Buyer Swap without Seller’s consent.

(c) Each of Buyer and Seller agree that it will not enter into a replacement Buyer Swap or Seller Swap, as applicable, unless the other Party is replacing its Buyer Swap or Seller Swap, as applicable, with the same replacement Swap Counterparty.

(d) In the event that the Seller Swap terminates or is no longer in effect and the [Prepaid Seller Payments Period] (as defined in the Seller Custodial Agreement) is in effect, then, during such Prepaid Seller Payments Period, Seller shall comply with the terms of the Seller Custodial Agreement and make all payments as and when required under [Section 3(e)] of the Seller Custodial Agreement. In the event that the Buyer Swap terminates or is no longer in effect and the [Issuer Payments Period] (as defined in the Buyer Custodial Agreement) is in effect, then, during such Issuer Payments Period, Buyer shall comply with the terms of the Buyer Custodial Agreement and make all payments as and when required under [Section 3(e)] of the Buyer Custodial Agreement. The Parties agree that during any [Prepaid Seller Payments Period] (as defined in the Seller Custodial Agreement) and during any [Issuer Payments Period] (as defined in the Buyer Custodial Agreement), Seller shall act as calculation agent under the Seller Custodial Agreement or the Buyer Custodial Agreement, as applicable. Seller agrees not to permit any amendment or other modification to the Seller Custodial Agreement that could adversely affect the right of Buyer to receive payments pursuant to [Section 3(e)] of the Seller Custodial Agreement. Buyer agrees not to permit any amendment or other modification to the Buyer Custodial Agreement that could adversely affect the right of Seller to receive payments pursuant to [Section 3(e)] of the Buyer Custodial Agreement.

Section 17.6 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR

Section 17.7 Option to Purchase Bonds. In connection with any new Interest Rate Period established under the Bond Indenture after the initial Interest Rate Period, Seller shall have the option to purchase Bonds to be remarketed on the relevant Mandatory Purchase Date by delivering notice to Buyer and the Trustee no later than the last Business Day of the Reset Period that Seller will purchase a quantity of Bonds necessary to avoid the occurrence of a Failed Remarketing. In the event that Seller exercises such option, (x) Seller will be obligated to pay the purchase price of such Bonds in immediately available funds on the Mandatory Purchase Date, and (y) to the extent a PSC Remarketing Election is in effect with respect to the Reset Period commencing immediately prior to such Interest Rate Period, then Seller shall be required to remarket the Contract Quantities associated with the PSC Remarketing Election, provided that:

(a) Seller shall be entitled to purchase such Energy for its own account,

(b) for all such Energy, regardless of how it is remarketed, Seller will pay Buyer the amount determined pursuant to Section 5(b)(v) of Exhibit C, and

(c) to the extent that it is determined that interest on the Bonds purchased by Seller is not excluded from gross income for federal income tax purposes, [Section 7 through Section 9] of Exhibit C shall not apply to any such remarketing.
Section 17.8 Termination Payment Adjustment Schedule. Seller shall prepare revisions to the then-current Exhibit D-1 (Termination Payment Adjustment Schedule) in connection with each successive Interest Rate Period pursuant to the terms of the Re-Pricing Agreement by delivering a revised Exhibit D-1 to Buyer no later than the last day of the applicable Reset Period, in which case such amendments will be effective as of the first day of the next Interest Rate Period.

ARTICLE XVIII.
MISCELLANEOUS

Section 18.1 Indemnification Procedure. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys’ fees and experts’ fees and to post any appeals bonds; provided, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 Deliveries. No later than delivery of the Prepayment, Buyer will deliver to Seller a copy of the Bond Indenture. The following documents shall be delivered by the Parties contemporaneously with this Agreement (unless otherwise specified):

(a) by Seller no later than the date of issuance of the Bonds, a Morgan Stanley Guarantee to Buyer guaranteeing Seller’s payment obligations under this Agreement to Buyer;

(b) by Buyer, a certificate of the Secretary or Assistant Secretary of Buyer setting forth (i) the resolutions of its governing body with respect to the authorization of Buyer to execute and deliver this Agreement, the Bond Indenture and the Power Supply Contracts, (ii) the appropriate individuals who are authorized to sign such agreements, (iii) specimen signatures of such authorized individuals, and (iv) the organization documents of Buyer, certified as being true and complete;

(c) by Seller, evidence reasonably satisfactory to Buyer of (i) Seller’s authority to execute and deliver this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement; and

(d) at Seller’s request at any time, Buyer shall provide Seller with a valid sales tax exemption certificate and any other required exemption or resale certificate in jurisdictions where sales of Energy occur under this Agreement to the extent such a certificate can be obtained and is necessary for exemption from any relevant state taxes that may be levied against the Parties in relation to the transactions under, or pursuant, to this Agreement.
Section 18.3  **Entirety; Amendments.**

(a)  This Agreement and the Re-Pricing Agreement, including the exhibits and attachments hereto and thereto, constitute the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein and in the Re-Pricing Agreement. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

(b)  If a Remarketing Non-Default Termination Event occurs, then Buyer and Seller may, upon mutual agreement in each Party’s sole discretion, amend this Agreement to reduce the Contract Quantity for one or more subsequent Months and to obligate Seller to pay the Trustee for the account of Buyer, an amount sufficient, together with other funds available under the terms of the Bond Indenture for such purpose, to pay the redemption price of the Bonds to be redeemed on such redemption date and any settlement payable by Buyer due to the corresponding amendment to the Buyer Swap and the Interest Rate Swap, and Buyer and Seller may simultaneously amend Exhibit D to reduce the Termination Payment for one or more such Months, but in each case only if Buyer and Seller have delivered to the Trustee:

(i)  An executed counterpart of such amendment;

(ii)  An executed counterpart of an amendment to the relevant Power Supply Contracts reducing the Contract Quantity to be sold and delivered thereunder in the same Months by the same quantities;

(iii)  An executed counterpart of an amendment to the Buyer Swap reducing the notional amounts thereunder for the same Months by the same quantities;

(iv)  An executed counterpart of an amendment to the Interest Rate Swap reducing the notional amounts thereunder in each subsequent Month by the amount by which the principal amount of the Bonds of the related series scheduled to remain outstanding in such Month will be reduced as a result of such redemption;

(v)  The revised schedules and notices required by [Section 2.01(b)] of the Bond Indenture in connection with any related partial redemption;

(vi)  An [Accountant’s Certificate] (as defined in the Bond Indenture) to the effect that each of (A) the scheduled Termination Payments for this Agreement for each Month thereafter is equal to or exceeds the aggregate principal amount of and interest on the Bonds scheduled to remain outstanding at the beginning of such Month, assuming that the Bonds are redeemed in accordance with the Bond Indenture, less the scheduled balance of the [Debt Service Fund] (as defined in the Bond Indenture) at the end of such Month and (B) the expected cashflow to the [Trust Estate] (as defined in the Bond Indenture) is sufficient to meet the ongoing debt service for the Bonds scheduled to remain outstanding;
(vii) The accompanying [Opinion of Bond Counsel] (as defined in the Bond Indenture) required by [Section 2.03(c)] of the Bond Indenture for such redemption; and

(viii) A [Rating Confirmation] (as defined in the Bond Indenture) in respect of such amendments and redemption.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION’S LAW; PROVIDED, HOWEVER, THAT THE AUTHORITY OF BUYER TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party granting such waiver. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other, except that Seller shall act on behalf of Buyer in remarketing Energy pursuant to Exhibit C. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.
Section 18.10 Immunity. Buyer represents and covenants to and agrees with Seller that it is not entitled to and shall not assert the defense of sovereign immunity with respect to its obligations or any Claims under this Agreement.

Section 18.11 Rates and Indices.

(a) Commodity Reference Prices.

(i) Price Replacement Process for Energy. If a Daily Commodity Reference Price for Energy is not available for any Hour but such Daily Commodity Reference Price has not permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price for the applicable Hours. If such agreement is not reached by the Parties within three (3) Business Days, the Parties shall request quotations for the applicable Daily Commodity Reference Price from four (4) recognized dealers in the applicable commodity (two (2) selected by each Party) for the period that such Daily Commodity Reference Price is expected to be unavailable. If four (4) quotations are provided as requested, the applicable Daily Commodity Reference Price for the applicable Hours shall be the arithmetic mean of the quotations provided by each recognized dealer after disregarding the quotations having the highest and lowest values; provided that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the applicable Daily Commodity Reference Price for the applicable Hours shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; provided that, if more than one (1) quotation has the same value, then the value of the two (2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received.

(ii) Price Replacement Process for Non-Published Index. If a Daily Commodity Reference Price is not available because it has permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price, which may include agreeing upon a published index or a basket of published indices (“Daily Replacement Index”) from which to seek quotes for basis differentials as the replacement for the applicable Daily Commodity Reference Price. If such agreement is not reached by the Parties within three (3) Business Days, then the Daily Replacement Index shall be selected by Seller, acting reasonably. The Parties shall request quotations from four (4) recognized dealers in the applicable commodity (two (2) selected by each Party) for a basis differential (“Daily Basis Differential”) between the Daily Replacement Index and physical prices at the relevant Delivery Point for the remaining term of this Agreement. If four (4) quotations are provided as requested, the Daily Basis Differential will be the arithmetic mean of the quotations provided by each recognized dealer, after disregarding the quotations having the highest and lowest values; provided that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the Daily Basis Differential shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; provided that, if more than one (1) quotation has the same value, then the value of the two
(2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received. The applicable Daily Commodity Reference Price shall be the Daily Replacement Index plus the Daily Basis Differential calculated in accordance with the provisions of this clause (iii).

(b) **Corrections.** If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within thirty (30) days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 18.12 **Limitation of Liability.** Notwithstanding anything to the contrary herein, all obligations of Buyer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Buyer payable solely from Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Buyer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Buyer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Buyer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 **Counterparts.** This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 **Rights of Trustee.** Pursuant to the terms of the Bond Indenture, Buyer has irrevocably appointed the Trustee as its agent to issue notices (including Remarketing Notices, Call Option Notices, Put Option Notices and Repurchase Offers) and, as directed under the Bond Indenture, to take any other actions that Buyer is required or permitted to take under this Agreement. Seller may rely on notices or other actions taken by Buyer or the Trustee and Seller has the right to exclusively rely on any notices delivered by the Trustee that the Trustee is authorized to deliver under the Bond Indenture, regardless of any conflicting notices that it may receive from Buyer.
Section 18.15 Waiver of Defenses. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller’s obligations pursuant to the terms of this Agreement.

Section 18.16 U.S. Resolution Stay. The Parties agree that (i) to the extent that prior to the date hereof the Parties hereto have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “Protocol”), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement and each Party shall be deemed to have the same status as Regulated Entity or Adhering Party as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the Parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “Bilateral Agreement”), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement and for such purposes each Party shall be deemed to have the same status as “Covered Entity”, “Counterparty Entity” or “Client Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “Bilateral Terms”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” or the “Agency Version of Omnibus Agreement (for use with U.S. G-SIBs)”, as applicable, published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a “Covered Agreement,” Seller shall be deemed a “Covered Entity” and Buyer shall be deemed a “Counterparty Entity” (or “Client Entity” for the Agency version, as applicable). In the event that, after the date of this Agreement, the Parties hereto become adhering Parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “QFC Stay Terms”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this Agreement” include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other. In addition, the Parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, as applicable, with all references to Seller replaced by references to the covered affiliate support provider.

“QFC Stay Rules” means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1–7 and 12 C.F.R. 47.1–8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

Section 18.17 Rate Changes.
(a) Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 18.17(b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

(b) In addition, and notwithstanding Section 18.17(a), to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. In the event it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 18.17(b) shall not apply, provided that, consistent with Section 18.17(a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 18.17(a).

IN WITNESS WHEREOF, the Parties have caused this Prepaid Energy Sales Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Separate Signature Page(s) Attached]
MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: ____________________________
Name: __________________________
Title: __________________________
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: ______________________________
Name: ______________________________
Title: ______________________________
EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To come.]
EXHIBIT A-2
EPS ENERGY PERIOD MONTHLY QUANTITY

[To come.]
EXHIBIT A-3
DAY-AHEAD AVERAGE PRICE WEIGHTING

[To come.]
EXHIBIT B

NOTICES

IF TO SELLER: Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293

General Notices: Attn: Miscellaneous Notices
Phone: 914-225-1548
Email: [_____]

Scheduling: Attn: Natgas Schedulers, Steve Zanon
Phone: 914-225-5483
Mobile: 914-327-1543
Email: natgas_schedulers@morganstanley.com
Email: Steven.Zanon@morganstanley.com

Payments/Invoicing/Statements: Attn: Manager, Natural Gas Ops
Phone: 443-627-6673
Fax: 914-750-1494
Email: physngsettle@morganstanley.com

IF TO ISSUER: [_____]

Scheduling: [_____]

Invoicing: [_____]

Payments: [_____]
[_____]
[_____]
Attention: [_____]

Statements: [_____]

General Notices: [_____]
EXHIBIT C

COMMODITY REMARKETING

Section 1. Defined Terms. Capitalized terms used but not otherwise defined in this Exhibit shall have the meanings given to such terms in this Agreement, unless otherwise indicated. The following terms, when used in this Exhibit C and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:


“Daily Remarketing Notice” has the meaning specified in Section 3(c) of this Exhibit C.

“Energy Remarketing Reserve Fund” means an account established under the Bond Indenture into which Buyer shall deposit the amounts specified in Section 5(b) of this Exhibit C.

“Expired Non-Private Business Sales Ledger” has the meaning specified in Section 9(a) of this Exhibit C.

“Expired Private Business Sales Ledger” has the meaning specified in Section 9(a) of this Exhibit C.

“Ledger Entry” has the meaning specified in Section 7(d) of this Exhibit C.

“Minimum Remarketing Sales Price” is an amount determined for Energy by the following formula:

\[
\text{MRSP} = \text{RRPP} - (\text{RRPP} \times (\text{RRF}/\text{CLB}))
\]

Where:

\[
\text{MRSP} = \text{The Minimum Remarketing Sales Price for one MWh}
\]

\[
\text{RRPP} = \text{The Remediation Remarketing Purchase Price for one MWh}
\]

\[
\text{RRF} = \text{The balance of the Energy Remarketing Reserve Fund}
\]

\[
\text{CLB} = \text{The combined cash balance of the Non-Private Business Sales Ledger and the Private Business Sales Ledger}
\]

“Monthly Discount” has the meaning specified in the Power Supply Contracts.

“Monthly Remarketing Notice” has the meaning specified in Section 3(b) of this Exhibit C.

“Municipal Utility” means any Person that (a) (i) is a “governmental person” as defined in Treasury Regulation Section 1.141-1(b) and (ii) owns an electric distribution utility (or provides Energy at wholesale to entities described in clause (i) that own such utilities) or (b) is a community choice aggregator organized under the Laws of the State of California. Buyer may from time to time revise the definition of “Municipal Utility” to conform to the applicable provisions of the
Code or Treasury Regulations by delivery of written notice to Seller setting forth the revised definition together with a Tax Opinion.

“Net Participant Price” means, with respect to all Project Participants, the Contract Index Price less the Monthly Discount.

“Non-Private Business Remarketing Proceeds” means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller’s remarketing of Energy in any Non-Private Business Sale.

“Non-Private Business Sale” means a sale (other than a Qualified Sale) of Energy to a “governmental person” as defined in Treasury Regulation Section 1.141-1(b) that in each case agrees in writing to not use any part of such Energy for a Private Business Use.

“Non-Private Business Sales Ledger” has the meaning specified in Section 7(a) of this Exhibit C.

“Non-Qualifying Remarketing Limit” means a quantity of Energy in MWhs, equal to 10% of the total quantity of Energy, in MWhs, to be delivered hereunder, as such Non-Qualifying Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Non-Qualifying Remarketing Limit

“Private Business Remarketing Limit” means a quantity of Energy in MWhs equal to (a) $15,000,000, divided by (b) the Specified Fixed Price, as such Private Business Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Private Business Remarketing Limit.

“Private Business Remarketing Proceeds” means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller’s remarketing of Energy in any Private Business Sale (including the purchase of such Energy by Seller for its own account).

“Private Business Sale” means any sale of Energy other than in a Non-Private Business Sale or a Qualified Sale.

“Private Business Sales Ledger” has the meaning specified in Section 7(b) of this Exhibit C.

“Private Business Use” has the meaning ascribed to such term in Section 141 of the Code.

“Qualified Sale” means the sale of Energy to a Municipal Utility that agrees in writing (i) to use all of such Energy for a Qualifying Use that is not a Private Business Use and (ii) not to count any purchase of such Energy towards any remediation obligations such Municipal Utility may have with respect to proceeds received from the sale of property purchased with tax-exempt financing proceeds.

“Qualifying Use” with respect to Energy has the meaning ascribed to such term in Treasury Regulations Section 1.148-1(e)(2)(iii)(A)(2) or (B)(2), as applicable.
“Remarketing Fee” means the amount specified in Exhibit F of this Agreement.

“Remarketing Non-Default Termination Event” has the meaning specified in Section 9(c) of this Exhibit C.

“Remarketing Notice” means either a Daily Remarketing Notice or a Monthly Remarketing Notice.

“Remediation Remarketing” means the remarketing of Energy in Qualified Sales by Seller pursuant to Section 8 of this Exhibit C in an effort to reduce to zero (0) any Ledger Entry balances in either the Non-Private Business Sales Ledger or the Private Business Sales Ledger.

“Remediation Remarketing Purchase Price” has the meaning specified in Section 8(b)(ii) of this Exhibit C.

“Tax Opinion” means an [Opinion of Bond Counsel] (as defined in the Bond Indenture) to the effect that an action proposed to be taken is not prohibited by the Bond Indenture or the Laws of the United States and will not adversely affect the exclusion from gross income for U.S. federal income tax purposes of interest on any Bonds the interest on which is intended to be excluded from such gross income under Section 103(a) of the Code.

“Treasury Regulations” means the U.S. Treasury Regulations under the Code.

Section 2. Buyer’s Right and Obligation to Request Remarketing. Buyer may, and, if required to do so under the Bond Indenture or the terms of this Agreement shall, request Seller to remarket, pursuant to this Exhibit C, all or a specified part of the Contract Quantities for any Delivery Point.

Section 3. Remarketing Notice.

(a) Generally. To request remarketing under this Exhibit C, Buyer must issue a Remarketing Notice, which Remarketing Notice must state as applicable (i) the portion of the Contract Quantity to be remarkekd from each relevant Delivery Point, and (ii) the Delivery Hours in which such portion of the Contract Quantity is to be remarkekd.

(b) Monthly Remarketing Notice. Buyer may designate a Remarketing Notice as a “Monthly Remarketing Notice” if the Remarketing Notice is delivered to Seller not later than three (3) Business Days prior to the start of the first Month in which it applies and applies to a period of one (1) Month or more.

(c) Daily Remarketing Notice. Buyer may designate a Remarketing Notice as a “Daily Remarketing Notice” if the Remarketing Notice is delivered to Seller not later than three (3) Business Days prior to the Business Day in which it applies.

Section 4. Seller’s Remarketing Obligations Generally.
(a) All Energy remarked by Seller pursuant to this Exhibit C shall be for the benefit of Buyer, meaning all remarked Energy shall first be sold by Seller to Buyer and then resold by or for the account of Buyer pursuant to the terms and provisions of this Exhibit C.

(b) Seller may act directly as principal to the remarketing buyer or may cause a supplier to Seller to act directly as principal to the remarketing buyer. Neither Seller nor any Person acting on Seller’s behalf shall owe any fiduciary duties to Buyer with respect to the remarketing of any Energy. Buyer acknowledges and agrees that Seller or a Person acting on Seller’s behalf in remarketing Energy may have other supplies of Energy available to sell to potential remarketing buyers, and Energy designated for remarketing shall not be entitled to any preference over any such other supplies of Energy.

(c) Seller shall prepare, maintain and provide Monthly to Buyer accurate and complete records showing (i) the identity of each purchaser in a Qualified Sale, a Non-Private Business Sale, or a Private Business Sale undertaken by Seller on Buyer’s behalf, (ii) the aggregate amount of Energy remarked under this Agreement in Qualified Sales, (iii) the aggregate amount of Energy remarked under this Agreement in Non-Private Business Sales, and (iv) the aggregate amount of Energy remarked under this Agreement in Private Business Sales.

(d) Any amounts due to Buyer for Energy remarked by Seller or purchased by Seller under this Exhibit C shall be remitted to Buyer pursuant to Section 14.2 of this Agreement in the Month following the Month in which such Energy is remarked or purchased, as applicable.

Section 5. Remarketing.

(a) Remarketing of Assigned Energy. Notwithstanding anything to the contrary herein, if the Monthly Quantity of Energy exceeds the quantity of Assigned Energy actually delivered in any Month, then (i) Buyer will be deemed to have requested for Seller to remarket the Assigned Energy not delivered (regardless of whether a Monthly Remarketing Notice or Daily Remarketing Notice was delivered) and (ii) Seller shall sell such Energy or cause such Energy to be sold in a Private Business Sale at a price not less than (A) [the applicable Contract Fixed Price during the Initial EPS Energy Periods]3 and (B) the Day-Ahead Average Price during any EPS Energy Period subsequent to the Initial EPS Energy Periods. Seller shall pay Buyer for any such Month the product of (I) the Monthly Quantity of Energy, less the amount of Assigned Energy actually delivered, multiplied by (II) the applicable price (as determined under the immediately preceding sentence). All such sales shall constitute a Private Business Sale and shall be reflected on the Private Business Sales Ledger. Buyer shall notify Seller if and to the extent the proceeds from such Private Business Sales are applied to amounts owed by the Project Participants pursuant to Section [7.5] of the Power Supply Contracts, and, to the extent so applied, such proceeds shall remediate such Private Business Sales and be entered as debits on the Private Business Sales Ledger.

(b) Remarketing of Base Energy. The following provisions shall apply to the remarketing of Base Energy by Seller:

3 HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.
(i) Seller shall use Commercially Reasonable Efforts to remarket or cause to be remarketed all Base Energy specified for remarketing. In exercising such Commercially Reasonable Efforts, Seller shall first attempt to remarket or cause to be remarked all Energy specified in a Remarketing Notice in Qualified Sales and then, if Seller is unable to so remarket all of such Energy for such purposes, in Non-Private Business Sales. If Seller is unable to remarket all or any portion of the Energy designated in a Remarketing Notice, then Seller shall purchase such Energy for its own account at the prices set forth in Section 5(b)(v) of this Exhibit C as if such Energy had been remarked to it.

(ii) Seller shall not be required to remarket any Base Energy at a net price to Seller (after deducting all transportation and transmission costs and all other costs) that is anticipated to be less than:

A. the Day-Ahead Market Price applicable to such Energy in the case of a Monthly Remarketing Notice, or

B. the Real-Time Market Price applicable to such Energy in the case of a Daily Remarketing Notice.

(iii) Notwithstanding the foregoing or anything to the contrary herein, provided that (A) a Project Participant is not in default under its Power Supply Contract, (B) such Project Participant has exercised Commercially Reasonable Efforts (as determined by Special Tax Counsel (as defined in the Bond Indenture)) to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement and (C) Seller is remarketing such Project Participant’s portion of the Contract Quantity because an EPS Energy Period is not in effect, then:

A. Seller shall purchase Energy for its own account and shall pay Buyer the product of (A) the quantity of such Energy purchased for its own account and (B) the Day-Ahead Market Price;

B. Proceeds received by Buyer under this Section 5(b)(iii) that exceed the amount Buyer would have received for the same quantity of Energy at the Net Participant Price shall be deposited in the [Participant Rebate Account] (as defined in the Bond Indenture) of the Energy Remarketing Reserve Fund;

C. the Project Participant shall be required under [Section 7.5] of the Power Supply Contract to exercise Commercially Reasonable Efforts to purchase Energy for a Qualifying Use to remediate any Ledger Entry resulting from Seller’s purchase of Energy; and

D. if any Ledger Entry has not been reversed within twelve Months of the date of any such Ledger Entry, Seller thereafter shall exercise Commercially Reasonable Efforts to remediate any such Ledger Entry by making a Qualified Sale to a Project Participant or any other Municipal Utility;
provided that, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time a Project Participant has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder consistent with the applicable Assignment Letter Agreement, the provisions of this Section 5(b)(iii) shall not apply and any Ledger Entries resulting from Seller’s remarketing of Base Energy in such case may not be remediated by Project Participant.

(iv) Proceeds from Qualified Sales and Non-Private Business Sales.

A. For any Energy specified in a Monthly Remarketing Notice that Seller remarkets in a Qualified Sale or Non-Private Business Sale, Seller shall deliver to Buyer the actual proceeds less the Remarketing Fee per MWh sold, provided that the aggregate amount delivered by Seller under this clause (A) for any Month shall not be less than the aggregate quantity so remarkeed during such Month multiplied by the Net Participant Price.

B. For any Energy specified in a Daily Remarketing Notice that Seller remarkets in a Qualified Sale or Non-Private Business Sale, Seller shall deliver to Buyer the actual proceeds received with respect to such Energy less the Remarketing Fee per MWh sold provided that the aggregate amount delivered by Seller under this clause (B) for any such Energy shall not be less than the aggregate amount that would have been paid to Buyer under Section 5(b)(v)(B) of this Exhibit C (with respect to Energy specified in a Daily Remarketing Notice), in each case less the Monthly Discount per MWh.

C. In the event the payment due date under a Qualified Sale or Non-Private Business Sale has not yet occurred prior to the date upon which payment is due under this Agreement for the applicable Month, the Parties shall nonetheless issue statements as if the full amount from such Qualified Sale or Non-Private Business Sale had been paid and, if such full payment is not received prior to the next Monthly due date under this Agreement, the Parties shall issue the appropriate statements to reflect the actual proceeds received and true-up any difference.

(v) Proceeds from Private Business Sales.

A. For any Energy specified in a Monthly Remarketing Notice that is not remarkeed in a Qualified Sale or Non-Private Business Sale, Seller shall pay to Buyer the positive result determined by the following formula with respect to each Delivery Point to which such Monthly Remarketing Notice applied:

\[ P = Q \times (IP - RF) \]

Where:

\[ P = \text{The amount payable by Seller under this Section 5(b)(v)(A)} \]
Q = The quantity of such Energy remarketed with respect to such Delivery Point

IP = The Contract Index Price for such Delivery Point

RF = The Remarketing Fee

B. For any Energy specified in a Daily Remarketing Notice that is not remarketed in a Qualified Sale or Non-Private Business Sale, Seller shall pay to Buyer the positive result determined by the following formula with respect to each Delivery Point to which such Daily Remarketing Notice applied:

\[ P = Q \times (IPL - RF) \]

Where:

P = The amount payable by Seller under this Section 5(b)(v)(B)

Q = The quantity of such Energy remarketed with respect to such Delivery Point

IPL = The Energy Real-Time Market Price for such Delivery Point

RF = The Remarketing Fee

(vi) **Energy Remarketing Reserve Fund.** Any proceeds received by Buyer under this Section 5 for Energy remarketed in sales other than Qualified Sales that exceed the amount Buyer would have received for the same quantity of Energy at the Net Participant Price shall be deposited in the Energy Remarketing Reserve Fund.

Section 6. **Reserved.**

Section 7. **Tracking Remarketing Proceeds.** Seller shall maintain four (4) separate ledgers related to remarketing proceeds as described below:

(a) One (1) ledger (the “Non-Private Business Sales Ledger”) shall include, (A) as dollar credits, the Non-Private Business Remarketing Proceeds, and (B) as a MWh credit, the MWhs corresponding to such Non-Private Business Remarketing Proceeds.

(b) Another ledger (the “Private Business Sales Ledger”) shall include, (A) as dollar credits, Private Business Remarketing Proceeds, and (B) as a MWh credit, the MWhs corresponding to such Private Business Remarketing Proceeds.

(c) The other two (2) ledgers shall be maintained as described in Section 9(a) of this Exhibit C.

(d) The credits to be recorded in the ledgers described in Section 7(a) and (b) of this Exhibit C (collectively, the “Ledger Entries”) shall be dated as of the first day of the Month
prior to the Month in which Buyer or Project Participant receives the proceeds corresponding to such Ledger Entries.

(e) The four (4) ledgers described in this Section 7 of this Exhibit C and all debits and credits to such ledgers shall be kept on an aggregate basis for purposes of this Exhibit C.

Section 8. Remediation Remarketing and Bond Redemptions. At any time that the net Ledger Entry balance of either the Non-Private Business Sales Ledger or the Private Business Sales Ledger is greater than zero (0):

(a) Buyer shall exercise Commercially Reasonable Efforts to utilize the proceeds represented by the dollar balances of such Ledger Entries to purchase Energy for resale in Qualified Sales and shall promptly notify Seller following such purchase and sale.

(b) Seller shall exercise Commercially Reasonable Efforts to locate opportunities for Buyer to purchase Energy to sell in Qualified Sales to remediate the proceeds represented by the dollar balances of the Ledger Entries. In this regard, if Seller locates a Remediation Remarketing opportunity, then

(i) Seller shall notify Buyer of such opportunity;

(ii) Buyer shall, upon receipt of such notice, purchase Energy from Seller at a price determined by Seller in a Commercially Reasonable manner based upon applicable market prices at the location where the remarketing opportunity sale will occur (the “Remediation Remarketing Purchase Price”);

(iii) Seller shall remarket such Energy on Buyer’s behalf in a Qualified Sale;

(iv) Seller shall remit to Buyer the proceeds collected from such Qualified Sale, but in no event shall Seller remit less than the Minimum Remarketing Sales Price for the remarketing transaction; provided, however, that to the extent Seller does not receive the Remediation Remarketing Purchase Price from Buyer prior to the Remediation Remarketing described herein, Seller shall credit the proceeds collected from such remarketing sale against the Remediation Remarketing Purchase Price owed to Seller, and Seller shall be reimbursed from the Energy Remarketing Reserve Fund to the extent necessary to make Seller whole for such Qualified Sale; and

(v) Seller shall issue to Buyer a confirmation notice (including the dollar price and MWhs) of each purchase of Energy by or on behalf of Buyer, and each sale of Energy on Buyer’s behalf, under this Section 8, and amounts due from or to Buyer shall be separately stated on the Billing Statement for the Month in which such remarketing transactions occur.

For the avoidance of doubt, Seller shall not sell, nor be required to sell, Energy to Buyer for a Remediation Remarketing if such Energy is to be remarkeeted by Seller on behalf of Buyer for less than the Minimum Remarketing Sales Price.
(c) Unless the terms of a Remediation Remarketing undertaken by Seller on Buyer’s behalf are specifically assumed by Buyer, Seller shall indemnify Buyer for any costs or liabilities associated with such Remediation Remarketing (other than costs related to the price at which such Energy is sold and the risk of collecting the sale proceeds from the remarketing buyer), including, without limitation, any cover or replacement costs; termination payments; fees, penalties, costs or charges (in cash or in kind) assessed by any Transmission Provider for failure to satisfy its balance or nomination requirements; Claims for breach of warranty; taxes, fees, levies, penalties, licenses or charges imposed by any Government Agency; and Claims from personal injury or property damages.

(d) The total purchase price of any Energy purchased by Buyer or Seller pursuant to Section 8(b) of this Exhibit C will be entered by Seller as a dollar debit on (i) first, the Private Business Sales Ledger, if and to the extent such ledger has a positive balance and such Energy is remarkeated in a Qualified Sale and (ii) second, on the Non-Private Business Sales Ledger, if and to the extent such ledger has a positive balance, the Private Business Sales Ledger has a zero (0) balance, and such Energy is remarkeated in a Qualified Sale, with such debit in the case of (i) or (ii) dated as of the last day of the Month in which such Energy was purchased. Each dollar debit shall offset and reverse an equal amount of the dollar credits to such ledger (that have not previously been transferred to the Expired Non-Private Business Sales Ledger or the Expired Private Business Sales Ledger) in the order in which they were made (beginning with the oldest credit not previously offset and reversed by any prior debit). Whenever a debit is made to the dollar balance of the Ledger Entries of either such ledger, Seller shall also debit the Energy balance of the Ledger Entries of such ledger based on (i) such dollar debit divided by (ii) an average Energy price calculated from the net Ledger Entry then present on the relevant ledger being debited. For the avoidance of doubt, neither the Non-Private Business Sales Ledger nor the Private Business Sales Ledger shall ever have a negative balance, and the same purchase transaction shall not result in a debit to more than one ledger except to the extent that a debit for the transaction causes one (1) ledger to have a zero (0) balance and the remaining portion of the permitted debit is made to the other ledger.

(e) In addition to the ability of Seller or Buyer to engage in Remediation Remarketing to reduce the balances of any Ledger Entries through Qualified Sales of Energy, the proceeds represented by the dollar balances of such Ledger Entries may also be remediated through the purchase of natural gas that will be remarkeated in Qualified Sales. For the purposes of entering MMBtu debits for natural gas to the Ledger Entries in accordance with Section 8(d) of this Exhibit C for any Remediation Remarketing of natural gas, a quantity of MWhs will be debited based on (i) the total proceeds paid for such natural gas divided by (ii) an average Energy price calculated from the net Ledger Entry then present on the relevant ledger being debited.

Section 9. Remarketing Non-Default Termination Event.

(a) In addition to the Non-Private Business Sales Ledger and the Private Business Sales Ledger described in Section 7(a) and (b) of this Exhibit C, above, Seller shall also maintain an “Expired Non-Private Business Sales Ledger” and an “Expired Private Business Sales Ledger.” Whenever a credit to the dollar balance of the Ledger Entries of the Non-Private Business Sales Ledger has not been reversed in full within two (2) years of such credit by an offsetting dollar debit in accordance with Section 8(d) or (e) of this Exhibit C, then Seller shall (i) debit the
remaining portion of such dollar credit and the MWh balance of the Ledger Entries in the manner described in the penultimate sentence of Section 8(d) and (ii) record such debits as credits to the Expired Non-Private Business Sales Ledger. Similarly, whenever a credit to the dollar balance of the Ledger Entries of the Private Business Sales Ledger has not been reversed in full within two (2) years of such credit by an offsetting dollar debit in accordance with Section 8(d) or (e) of this Exhibit C, then Seller shall (i) debit the remaining portion of such dollar credit and the MWh balance of the Ledger Entries in the manner described in the penultimate sentence of Section 8(d) and (ii) record such debits as credits to the Expired Private Business Sales Ledger. Pursuant to Section 18.3(b) of this Agreement, upon any partial redemption of Bonds in accordance with the Bond Indenture, the dollar credits made to either the Expired Non-Private Business Sales Ledger or the Expired Private Business Sales Ledger shall be reduced (in the order of entry) by an aggregate amount corresponding to the principal amount of Bonds so redeemed, and the MWh credits to such ledgers shall be reduced by the contemporaneous MWh credits corresponding to the dollar credits so reduced.

(b) No later than the tenth (10th) day of each Month, Seller shall provide to Buyer copies of the Non-Private Business Sales Ledger, the Private Business Sales Ledger, the Expired Non-Private Business Sales Ledger and the Expired Private Business Sales Ledger showing all credits and debits to each such ledger since the Execution Date.

(c) A “Remarketing Non-Default Termination Event” shall occur if, at any time, either (i) (A) the sum of all Btu credits on the Expired Non-Private Business Sales Ledger and the Expired Private Business Sales Ledger exceeds (B) the Non-Qualifying Remarketing Limit, or (ii) (A) the sum of all Btu credits on the Expired Private Business Sales Ledger exceeds (B) the Private Business Remarketing Limit.

(d) The occurrence of a Remarketing Non-Default Termination Event and any remedies associated therewith in Article XVII of this Agreement shall be Buyer’s sole and exclusive remedies with respect to any inability by Seller to purchase and remarket Energy for Buyer pursuant to, or any breach by Seller of its obligations under, this Exhibit C.

Section 10. Buyer Right to Request to Purchase Remarketed Energy. Notwithstanding any other provision of this Exhibit C, Buyer may request in a Remarketing Notice delivered to Seller that Buyer be the remarketing buyer of the quantities of Energy described in such Remarketing Notice, in which case Seller will sell such remarketed Energy to Buyer at a price, at Delivery Point(s) and on date(s) to be mutually agreed (but the price, with respect to Energy remarketed pursuant to a Monthly Remarketing Notice, shall in no event be less than the Contract Index Price less the Monthly Discount) by the Parties, provided that Seller shall be obligated to remarket such Energy to Buyer only if all of the following conditions are satisfied:

(a) Buyer is not in default under any Transaction Document;

(b) Buyer has certified to Seller in the Remarketing Notice that the condition in (a) above is true;

(c) Buyer has provided such adequate assurances of Buyer’s performance, if any, as may have been reasonably requested by Seller;
(d) there is a master agreement in effect between Buyer and Seller that will govern the remarketing transaction between Buyer and Seller; and

(e) Buyer covenants to resell the Energy only in Qualified Sales.
EXHIBIT D

TERMINATION PAYMENT SCHEDULE

The Termination Payment for any Early Termination Payment Date will be the amount set forth on the attached table in the column corresponding to the month in which the Early Termination Date occurs, plus the product of (a) the Contract Quantity for such Month, minus the quantity of Energy required to have been delivered in such Month prior to the effectiveness of such Early Termination Date, multiplied by (b) the result of (i) the [Fixed Price] for Energy (as defined in the Buyer Swap), minus (ii) the Specified Discount then in effect.

(To be attached.)
EXHIBIT D-1

TERMINATION PAYMENT ADJUSTMENT SCHEDULE

(To be attached pursuant to Section 17.8 as required.)
EXHIBIT E
FORM OF MORGAN STANLEY GUARANTEE

Morgan Stanley

1585 BROADWAY

NEW YORK, NY 10036-8293

[DATE]

To: [______]

Ladies and Gentlemen:

In consideration of California Community Choice Financing Authority (hereinafter “Counterparty”) having entered into or entering into (i) that certain Prepaid Energy Sales Agreement, dated as of [______], 2021, with Morgan Stanley Energy Structuring, L.L.C. (hereinafter “Obligor”) (the “Prepaid Agreement”) and (ii) that ISDA Master Agreement, dated as of [______], 2021, the Schedule, dated as of [______], 2021, and Confirmations, dated as of [______], 2021, with Obligor (together with the Prepaid Agreement, the “Agreements”), Morgan Stanley, a Delaware corporation (hereinafter “Guarantor”), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreements, the due and punctual payment of all amounts payable by Obligor under the Agreements when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination or otherwise, in accordance with, and subject to, the terms of the Agreements and giving effect to any applicable grace period. Upon failure of Obligor punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this guarantee (the “Guarantee”) (or to such other address as Guarantor may specify in writing), Guarantor agrees to pay or cause to be paid such amounts owed by Obligor; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee; provided further that any payment made by Guarantor hereunder will be made directly to [______], as trustee under the [Bond Indenture] (as defined in the Prepaid Agreement), or to any successor trustee under the Bond Indenture and that such payment shall be deemed to be a payment to Counterparty hereunder. This Guarantee is of payment and not of collection.

Guarantor hereby agrees that its obligations hereunder shall be continuing and unconditional and will not be discharged except by complete payment of the amounts payable under the Agreements, irrespective of (1) any claim as to the Agreements’ validity, regularity or enforceability or the lack of authority of Obligor to execute or deliver the Agreements; or (2) any change in or amendment to the Agreements; or (3) any waiver or consent by Counterparty with respect to any provisions thereof; or (4) the absence or existence of any action to enforce the Agreements, or the recovery
of any judgment against Obligor or of any action to enforce a judgment against Obligor under the Agreements; or (5) the dissolution, winding up, liquidation or insolvency of Obligor, including any discharge of obligations therefrom; or (6) any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

Guarantor hereby waives diligence, presentment, demand on Obligor for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against Obligor and protest or notice, except as provided for in the Agreements with respect to amounts payable by Obligor. If at any time payment under the Agreements is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of Obligor or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

Guarantor represents to Counterparty, as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

2. its execution, delivery and performance of this Guarantee has been and remains duly authorized by all necessary corporate action and does not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' right or by general equity principles.

Each of the provisions contained in this Guarantee shall be severable and distinct from one another and if one or more of such provisions are now or hereafter becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected, prejudiced or impaired thereby.

By accepting this Guarantee and executing the Agreements, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guarantee, provided that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by Obligor under the Agreements.
This Guarantee shall expire or terminate, as applicable, on the earliest of (i) [____], 20[___] (ii) the earlier termination of the Prepaid Agreement and (iii) the last day of any [Reset Period (as defined in the Prepaid Agreement)] if Guarantor (A) has delivered to Counterparty a termination notice of this Guarantee, and (B) no assignment has been effected pursuant to clause (c) of [Article XIII of the Prepaid Agreement] prior to the end of the Reset Period during which such termination notice was delivered. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of Obligor with respect to obligations and liabilities incurred prior to such expiration or termination.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreements.

MORGAN STANLEY

By:

Name:
Title:
Address: 1585 Broadway
New York, NY 10036
Attn: Treasurer
Fax No.: 212-762-0337
Phone: 212-761-4000
# EXHIBIT F

## PRICING AND OTHER TERMS

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<tr>
<td>Delivery Period:⁴</td>
<td>The period beginning on [<em><strong><strong><strong>] and ending on [</strong></strong></strong></em>] or earlier upon the Early Termination Date</td>
</tr>
<tr>
<td>Minimum Discount:</td>
<td>$[<em><strong>]/MWh for the [Initial Reset Period] (as defined in the Re-Pricing Agreement), and thereafter an amount no less than $[</strong></em>]/MWh</td>
</tr>
<tr>
<td>Monthly Discount:</td>
<td>$[___]/MWh during the [Initial Reset Period] (as defined in the Re-Pricing Agreement), and for each Month of a Reset Period thereafter, the Monthly Discount portion of the Available Discount for such Reset Period determined by the [Calculation Agent] (as defined in the Re-Pricing Agreement) pursuant to the Re-Pricing Agreement</td>
</tr>
<tr>
<td>Prepayment:⁵</td>
<td>$[_______________]</td>
</tr>
<tr>
<td>Prepayment Outside Date:⁶</td>
<td>[_________]</td>
</tr>
<tr>
<td>Remarketing Fee:⁷</td>
<td>$[<em><strong>]/MWh for any Energy remarketed pursuant to a Monthly Remarketing Notice $[</strong></em>]/MWh for any Energy remarketed pursuant to a Daily Remarketing Notice</td>
</tr>
<tr>
<td>Fixed Price:⁸</td>
<td>$[___]/MWh</td>
</tr>
<tr>
<td>Specified Fixed Price:⁹</td>
<td>$[___]/MWh</td>
</tr>
<tr>
<td>Specified Discount:¹⁰</td>
<td>For Energy delivered [<strong><strong>] – [__<em><strong>]: $[</strong></em>]/MWh For Energy delivered [</strong></strong>] - [_____]: to be the [Available Discount] for such Reset Period</td>
</tr>
</tbody>
</table>

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¹⁴ NTD: MSCG to confirm.  
⁵ NTD: To come on date of pricing.  
⁶ NTD: Date to be 3 weeks post-signing.  
⁷ NTD: The Remarketing Fee is an amount deducted from remarketing proceeds delivered to Buyer.  
⁸ NTD: Fixed Price to equal swap spread, plus swap fees, plus MSCG spread.  
⁹ NTD: Specified Fixed Price to equal the Prepayment amount divided by the total quantity of Energy to be delivered.  
¹⁰ NTD: This is used for discounting amounts owed by Buyer to Seller for amounts already delivered prior to a termination.
EXHIBIT G

RECEIVABLES PURCHASES

[To be attached.]
TRUST INDENTURE

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

[TRUSTEE],
as Trustee

[______________]
[Energy Project Revenue Bonds
Series 2021A]

Dated as of [______________] 1, 2021
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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of [_____________] 1, 2021 (this “Indenture”), is by and between California Community Choice Financing Authority, a joint powers authority and public entity of the State of California (the “Issuer”) and [TRUSTEE], as trustee (the “Trustee”).

WITNESSETH:

WHEREAS, pursuant to the provisions of the Act (capitalized terms used herein and not otherwise defined shall have the meanings given such terms in Section 1.01 hereof), Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (each a “Member” and, collectively, the “Members”) entered into a joint powers agreement pursuant to which the Issuer was organized and established for the purpose, among other things, of entering into contracts for electricity and energy services and agreements for services to facilitate the sale and purchase of electricity and other related services, and for issuing bonds to assist the Members in financing such contracts, agreements, purchases, sales and services; and

WHEREAS, the Issuer is authorized under the Act to acquire electricity and energy services and enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to issue revenue bonds to finance the cost of acquisition of such electricity and energy services and other agreements, and is vested with all powers necessary to accomplish the purposes for which it was created; and

WHEREAS, the Issuer has determined to finance the Cost of Acquisition of the Energy Project through the issuance of Bonds pursuant to this Indenture; and

WHEREAS, the execution and delivery of this Indenture has been in all respects duly and validly authorized and approved by resolution of the Board of the Issuer; and

WHEREAS, the Trustee is willing to accept the trusts provided for in this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, and the Issuer and the Trustee agree as follows for the benefit of the other, for the benefit of the Holders of the Bonds issued pursuant hereto and the other parties secured hereby:

GRANTING CLAUSES

FOR AND IN CONSIDERATION OF the premises, the mutual covenants of Issuer and the Trustee herein, the purchase of the Bonds by the Holders thereof and the obligations of the Interest Rate Swap Counterparty under the Interest Rate Swap, and in order to secure:

(i) the payment of the principal of and premium, if any, and interest on the Bonds and the payment of the Interest Rate Swap Payments, in each case according to the tenor and effect of the Bonds and the Interest Rate Swap, and

-1-
(ii) performance and observance by Issuer of all the covenants expressed or implied herein and in the Bonds,

Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of Issuer in and to the Trust Estate, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, and all other rights hereinafter granted for the further securing of the Bonds;

FOR AND IN CONSIDERATION OF the obligations of the Commodity Swap Counterparty under the Commodity Swap and the mutual covenants of Issuer and Commodity Swap Counterparty thereunder, and in order to secure the payment of the Commodity Swap Payments, Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of Issuer in the Commodity Swap Payment Fund and the amounts on deposit therein;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby and hereafter conveyed and assigned, or agreed or intended so to be, to the Trustee and its respective successors in said trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of (i) all Holders of the Bonds without privilege, priority or distinction as to the lien or otherwise of any Bond over any other Bond or the payment of interest with respect to any Bond over the payment of interest with respect to any other Bond, except as otherwise provided herein, and (ii) the Interest Rate Swap Counterparty; and

PROVIDED, HOWEVER, that if Issuer, its successors or assigns shall well and truly pay, or cause to be paid, the principal or Redemption Price, if any, on the Bonds and the interest due or to become due thereon, the Commodity Swap Payments and the Interest Rate Swap Payments, at the times and in the manner provided in the Bonds, the Commodity Swap and the Interest Rate Swap, respectively, according to the true intent and meaning thereof, and shall cause the payments to be made into the Funds as required hereunder, or shall provide, as permitted hereby, for the payment thereof as provided in Section 12.01, and shall well and truly keep and perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments or provisions for such payments by Issuer, the Bonds, the Commodity Swap and the Interest Rate Swap shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of Issuer to the Holders of such Bonds shall thereupon cease, terminate and be discharged and satisfied; otherwise this Indenture shall remain in full force and effect.

The terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all Persons who from time to time shall be or become the Holders thereof, and the trusts and conditions upon which the Revenues, moneys, securities and funds held or set aside under this Indenture, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, are to be held
and disposed of, which said trusts and conditions the Trustee hereby accepts, and the respective parties hereto covenant and agree, are as follows:

**ARTICLE I**

**DEFINITIONS AND GOVERNING LAW**

*Section 1.01. Definitions.* The following terms shall, for all purposes of this Indenture, have the following meanings:

“Account” or “Accounts” means, as the case may be, each or all of the Accounts established in Sections 4.15 and 5.02.

“Accountant’s Certificate” means a certificate signed by an independent certified public accountant or a firm of independent certified public accountants, selected by Issuer, who may be the accountant or firm of accountants who regularly audit the books of Issuer and must be identified upon selection in writing to the Trustee.

“Act” means the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time.

“Administrative Fee Fund” means the Administrative Fee Fund established in Section 5.02.

“Alternate Liquidity Facility” means a Liquidity Facility for a Series of Bonds delivered to the Trustee in substitution for a Liquidity Facility then in effect with respect to such Bonds.

“Amortized Value” means, with respect to any Bond to be redeemed while bearing interest at a Term Rate, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated by a major market maker in municipal securities, as the quotation agent, selected by Issuer, based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond’s original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV; provided that in the case of a redemption of the Series 2021A Bonds pursuant to Section 4.03(b), the Amortized Value of the Series 2021A Bonds shall be the percentage of the principal amount thereof for the applicable redemption date set forth in Section 4.03(b).

[DISCUSS INDEX BONDS/REPLACE LIBOR] “Applicable Factor” means (a) with respect to the initial issuance of a Series of Bonds bearing interest at a LIBOR Index Rate, the percentage or factor of LIBOR determined by the Underwriter and specified in the Index Rate Determination Certificate for such Series of Bonds, or (b) with respect to a Series of Bonds for which the Interest Rate Period is being converted to a LIBOR Index Rate Period (including a
change in such Interest Rate Period from one LIBOR Index Rate Period to another LIBOR Index Rate Period and which may include a percentage or factor to be applied to LIBOR other than the percentage set forth in clause (a)), the percentage or factor of LIBOR determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate, provided that Issuer delivers to the Trustee a Favorable Opinion of Bond Counsel addressing the selection of such percentage or factor. The Applicable Factor shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a) and included in the applicable Index Rate Determination Certificate, and once determined shall remain in effect for the duration of the applicable LIBOR Index Rate Period.

"Applicable Spread" means, with respect to a Series of Bonds for which the Initial Interest Rate Period is an Index Rate Period, or for any Series of Bonds for which the Interest Rate Period is converted to an Index Rate Period, the margin or spread, which may be positive or negative, determined by the Underwriter or the Remarketing Agent, respectively, on or prior to the Issue Date or Conversion Date for such Bonds, as applicable, and specified in the applicable Supplemental Indenture or Index Rate Determination Certificate, as applicable, which shall be added to the applicable Index to determine the Index Rate. The Applicable Spread shall remain constant for the duration of the applicable Index Rate Period. The Applicable Spread shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a) and included in the applicable Index Rate Determination Certificate.

"Applicable Tax Exempt Municipal Bond Rate" means, for the Bonds of any maturity, the “Comparable AAA General Obligations” yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable, as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the “Comparable AAA General Obligations” yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the “Comparable AAA General Obligations” yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody’s and S&P with a maturity date equal to the stated maturity date or Mandatory Purchase Date, as applicable, of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent’s determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding on all parties in the absence of manifest error and may be conclusively relied upon in good faith by the Trustee.
“Assignment Payment” means any payment received from the Energy Supplier in connection with an assignment of the Energy Purchase Agreement to a replacement energy supplier.

“Assignment Payment Fund” means the Assignment Payment Fund established in Section 5.02.

“Attesting Party” means an individual authorized by a resolution of the Board to attest the signatures of Authorized Officers.

“Authorized Denominations” means with respect to any (a) Term Rate Period or Index Rate Period, $5,000 and any integral multiple thereof, and (b) Commercial Paper Interest Rate Period, Daily Interest Rate Period or Weekly Interest Rate Period, $100,000 and any integral multiple of $1,000 in excess of $100,000.

“Authorized Newspaper” means The Wall Street Journal or The Bond Buyer or any other newspaper or journal printed in the English language and customarily published on each Business Day devoted to financial news and selected by Issuer, with the approval of the Trustee, whose decision shall be final.

“Authorized Officer” means (a) the Treasurer/Controller of the Issuer, and (b) any other person or persons designated by the Board by resolution to act on behalf of the Issuer under this Indenture. The designation of such person or persons shall be evidenced by a Written Certificate of the Issuer delivered to a Responsible Officer of the Trustee containing the specimen signature of such person or persons and signed on behalf of the Issuer by its Treasurer/Controller. Such designation as an Authorized Officer shall remain in effect until a Responsible Officer of the Trustee receives actual written notice from the Issuer to the contrary, accompanied by a new certificate.

“Beneficial Owner” means, with respect to Bonds registered in the Book Entry System, any Person who acquires a beneficial ownership interest in a Bond held by the Securities Depository, and the term “Beneficial Ownership” shall be interpreted accordingly.


“Board” means the Board of Directors of Issuer, or if said Board is abolished, the board, body, commission or agency succeeding to the principal functions thereof or to whom the power and duties granted or imposed by this Indenture are given by law, and which shall be identified in a Written Notice of Issuer delivered to the Trustee.

“Bond” or “Bonds” means any of the Bonds and Refunding Bonds authorized by Section 2.01.

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP or any other counsel of nationally recognized standing in matters pertaining to the tax exempt status of interest on
obligations issued by states and their political subdivisions and instrumentalities, duly admitted to
the practice of law before the highest court of any state of the United States, and selected by Issuer.

“Bond Payment Date” means each date on which (a) interest on the Bonds is due and payable, (b) an Interest Rate Swap Payment is due, or (c) principal of the Bonds is payable at maturity or pursuant to Sinking Fund Installments.

“Bond Purchase Fund” means the fund by that name established pursuant to Section 4.15(a), including the Remarketing Proceeds Account and Issuer Purchase Account therein.

“Bond Registrar” means the Trustee and any other bank or trust company organized under
the laws of any state of the United States of America or national banking association appointed by
Issuer to perform the duties of Bond Registrar under this Indenture.

“Bondholder” or “Holder of Bonds” or “Holder” or “Owner” means any Person who
shall be the registered owner of any Bond or Bonds.

“Book Entry System” means the system maintained by the Securities Depository and
described in Section 3.09.

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which
commercial banks in New York, New York, or the city in which is located the designated corporate
trust office of the Trustee, the Custodian or a Calculation Agent or the operational offices of Issuer
are authorized by law or executive order to close, (c) a day on which the New York Stock
Exchange, Inc. is closed, (d) a day on which the payment system of the Federal Reserve System is
not operational, (e) for purposes of determining the SIFMA Index Rate, any day that SIFMA
recommends that the fixed income departments of its members be closed for purposes of trading
in United States government securities, and (f) for purposes of determining the LIBOR Index Rate,
any day on which dealings in deposits in United States dollars are not transacted in the London
interbank market.

“Calculation Agent” means, with respect to any Series of Bonds bearing interest at an
Index Rate, the Calculation Agent with respect to such Bonds appointed by Issuer, with written
notice to the Trustee, pursuant to the applicable Calculation Agent Agreement and the Indenture.
[The initial Calculation Agent for the Series 2021 A Bonds shall be [Trustee]].

“Calculation Agent Agreement” means, with respect to any Series of Bonds bearing
interest at an Index Rate, such agreement as is entered into by the applicable Calculation Agent
and Issuer with respect to such Bonds providing for the determination of the applicable Index Rate
in accordance with Section 2.09 or Section 2.14, as applicable.

“Call Option Notice” has the meaning set forth in Section 2.2(b) of the Receivables
Purchase Provisions.
“Call Receivable” has the meaning set forth in Section 1.1 of the Receivables Purchase Provisions.

“Call Receivables Offer” has the meaning set forth in Section 2.2(a) of the Receivables Purchase Provisions.

“Cede” means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds pursuant to Section 3.09.

“Commercial Paper Interest Rate Period” means, with respect to a Series of Bonds, each period comprised of CP Interest Terms for the Bonds of such Series, during which CP Interest Term Rates are in effect for such Bonds.

“Commodity Swap” means the ISDA Master Agreement, Schedule and Confirmation between Issuer and the Commodity Swap Counterparty, or any replacement agreement permitted by Section 2.12(b), pursuant to which Issuer will pay to the Commodity Swap Counterparty an index based floating price and the Commodity Swap Counterparty will pay to Issuer a fixed price in relation to the quantities of Energy to be delivered under the Energy Purchase Agreement.

“Commodity Swap Counterparty” means [Royal Bank of Canada] and its successors and assigns and the counterparty to any replacement Commodity Swap that meets the requirements of Section 2.12(b).

“Commodity Swap Mandatory Termination Event” has the meaning set forth in Section 2.12(c)(iii).

“Commodity Swap Payment Fund” means the Commodity Swap Payment Fund established in Section 5.02.

“Commodity Swap Payments” means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to the Commodity Swap Counterparty by Issuer (including any such amount paid to the Custodian pursuant to Section 3 of the Issuer Custodial Agreement).

“Commodity Swap Receipts” means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to Issuer by the Commodity Swap Counterparty.

“Contract Price” has the meaning assigned to such term in the Energy Supply Contracts.

“Conversion” means (a) a conversion of a Series of Bonds from one Interest Rate Period to another Interest Rate Period and (b) with respect to a Series of Bonds bearing interest at an Index Rate, the establishment of a new Index, a new Index Rate and/or a new Index Rate Period. A Conversion may occur only on a Mandatory Purchase Date.

“Conversion Date” means the effective date of a Conversion of a Series of Bonds and shall occur only on a Mandatory Purchase Date.
“Cost of Acquisition” means all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing Energy Project, including:

(a) the amount of the prepayment required to be made by Issuer under the Energy Purchase Agreement;

(b) the amount for deposit into the Capitalized Interest Subaccount of the Debt Service Account for capitalized interest on the Bonds, with such interest being calculated in accordance with the definition of “Debt Service;”

(c) the costs and expenses incurred in the issuance and sale of the Bonds, including, without limitation, legal, financial advisory, accounting, engineering, consulting, municipal advisory, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds and preparation of this Indenture;

(d) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of Energy Project;

(e) the allowance for working capital requirements of Issuer with respect to Energy Project in such amounts as shall be deemed reasonably necessary by Issuer; and

(f) with respect to any Series of Refunding Bonds, the amounts necessary to purchase, redeem and discharge Bonds being refunded, including the payment of the Purchase Price or the Redemption Price of such Bonds, any necessary deposits to the Debt Service Account, and all other costs and expenses incurred in connection with such Series of Refunding Bonds, including the costs and expenses described in (d) and (e) above.

“CP Interest Term” means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, each period established in accordance with Section 2.08 during which a CP Interest Term Rate is in effect for the Bonds of such Series.

“CP Interest Term Rate” means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, an interest rate established periodically for each CP Interest Term in accordance with Section 2.08.

“CP Mandatory Purchase Date” means (i) each Mandatory Purchase Date and (ii) the day next succeeding the last day of each CP Interest Term.

“CPI” means, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (“CPI”), published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor (“BLS”) and reported on Bloomberg CPURNSA or any successor service (“Bloomberg CPURNSA”). If such index is not then reported by such source but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such Month using a source it deems to be accurate and appropriate.
“CPI Index Rate Formula” means \((CPI_{t} - CPI_{t-12}) / CPI_{t-12}\)

Where:

\(CPI_{t}\) = CPI for the applicable Reference Month;

\(CPI_{t-12}\) = CPI for the twelfth month prior to the applicable Reference Month; and

All values used in the CPI Index Rate Formula will be truncated to six decimal places and rounded to the nearest fifth decimal place (one hundred thousandth of a percentage point), rounding upwards if the sixth decimal place is five or greater (e.g., 9.876555% (or .09876555) would be rounded up to 9.87656% (or .0987656) and 9.876554% (or .09876554) would be rounded down to 9.87655% (or .0987655)). All percentages resulting from any calculation of the interest rate will be truncated to four decimal places and rounded to the nearest third decimal place (one thousandth of a percentage point), rounding upwards if the fourth decimal place is five or greater (e.g., 9.8765% (or .098765) would be rounded up to 9.877% (or .09877) and 9.8764% (or .098764) would be rounded down to 9.876% (or .09876)). All dollar amounts used in or resulting from such calculation on Bonds bearing interest at the CPI Index Rate will be rounded to the nearest cent (with one-half cent being rounded upward).

If the sum of (a) the CPI Index Rate Formula and (b) the Applicable Spread on any CPI Index Rate Reset Date yields a number equal to or less than zero, the interest rate on such CPI Index Rate Bonds shall be 0.00% (zero percent) for the applicable month.

“CPI Index Rate” means the interest rate per annum determined by the Calculation Agent equal to the sum of (a) the result of the CPI Interest Rate Formula, plus (b) the Applicable Spread, as set forth in Section 2.14.

“CPI Index Rate Period” means, with respect to a Series of Bonds, each period during which a CPI Index Rate is in effect for such Bonds.

“CPI Index Rate Reset Date” means, the first Business Day of each calendar month.

“CPI Interest Period” means the period from and including a CPI Index Rate Reset Date, to but excluding the next following CPI Index Rate Reset Date.

“Custodial Agreements” means, collectively, the Energy Supplier Custodial Agreement and the Issuer Custodial Agreement.

“Custodian” means [Trustee], as Custodian under the Custodial Agreements and its successors and assigns.
“Daily Interest Rate” means, with respect to a Series of Bonds, the final daily interest rate for such Bonds determined by the Remarketing Agent by 11:00 a.m. New York City time pursuant to Section 2.05.

“Daily Interest Rate Period” means, with respect to a Series of Bonds, each period during which a Daily Interest Rate is in effect for such Bonds.

“Debt Service” means with respect to any Outstanding Bonds, for any particular period of time, an amount equal to the sum of:

(a) all interest payable during such period on such Bonds, but excluding any interest that is to be paid from Bond proceeds on deposit in the Debt Service Account, plus

(b) the Principal Installments payable during such period on such Bonds, calculated on the assumption that, on the day of calculation, such Bonds cease to be Outstanding by reason of, but only by reason of, payment either upon maturity or application of any Sinking Fund Installments required by this Indenture;

provided that [(i)] the interest on any Bonds with a related Interest Rate Swap shall be calculated on the basis of the fixed interest rate payable by Issuer under the Interest Rate Swap[, and (ii)] principal and interest due on the first day of a Fiscal Year shall be deemed to have been payable and paid on the last day of the immediately preceding Fiscal Year].

“Debt Service Account” means the Debt Service Account in the Debt Service Fund established in Section 5.02.

“Debt Service Fund” means the Debt Service Fund established in Section 5.02.

“Debt Service Fund Agreement” means any debt service fund agreement among the Trustee, Issuer and a provider, or between Issuer and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund.

“Debt Service Fund Agreement Guaranty” means any unconditional guaranty, in favor of Issuer and the Trustee, guarantying the obligations of the provider under any Debt Service Fund Agreement.

“Defaulted Interest” has the meaning given to such term in Section 3.08.

“Defeasance Securities” means (a) Government Obligations and (b) to the extent that such deposits or certificates of deposit are Qualified Investments, deposits in interest-bearing time deposits or certificates of deposit which shall not be subject to redemption or repayment prior to their maturity or due date other than at the option of the depositor or holder thereof or as to which an irrevocable notice of redemption or repayment, or irrevocable instructions have been given to call for redemption or repayment, of such time deposits or certificates of deposit on a specified redemption or repayment date has been given and such time deposits or certificates of deposit are not otherwise subject to redemption or repayment prior to such specified date other than at the
option of the depositor or holder thereof, and which are fully secured by Government Obligations
to the extent not insured by the Federal Deposit Insurance Corporation.

“Depository” means any bank, trust company, national banking association, savings and
loan association, savings bank or other banking association selected by Issuer as a depository of
moneys and securities held under the provisions of this Indenture, and may include the Trustee.

“Dissemination Agent” means that certain dissemination agent appointed by Issuer,
pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent
appointed by Issuer in accordance with the Continuing Disclosure Undertaking.

“DTC” means The Depository Trust Company, New York, New York, and its successors
and assigns.

“Early Termination Payment Date” has the meaning given to such term in Section 17.4(d)
of the Energy Purchase Agreement.

“Energy” has the meaning given to such term in the Power Supply Contracts.

“Energy Project” means Issuer’s purchase of Energy pursuant to the Energy Purchase
Agreement and related contractual arrangements and agreements, and the purchase of any Energy
to replace Energy not delivered as required pursuant to the Energy Purchase Agreement.

“Energy Purchase Agreement” means the Prepaid Energy Sales Agreement, dated as of
[____________] between Issuer and the Energy Supplier.

“Energy Remarketing Reserve Fund” means the Energy Remarketing Reserve Fund in
established in Section 5.02.

“Energy Supplier” means Morgan Stanley Energy Structuring, L.L.C.

“Energy Supplier Custodial Agreement” means the Custodial Agreement dated as of the
Initial Issue Date among the Commodity Swap Counterparty, the Energy Supplier, the Trustee and
the Custodian.

“Energy Supplier Guaranty” means the Morgan Stanley Guarantee, as defined in the
Energy Purchase Agreement.

“Electronic Means” means the following communication methods: e-mail, facsimile
transmission, secure electronic transmission containing applicable authorization codes, passwords
and/or authentication keys issued by the Trustee, or another method or system specified by a
Responsible Officer of the Trustee as available for use in connection with its services hereunder.

“Eligible Bonds” means any Bonds other than Bonds which a Responsible Officer of the
Trustee actually knows to be owned by, for the account of, or on behalf of Issuer or a Project
Participant.
“EMMA” means the Electronic Municipal Market Access system, the website currently maintained by the Municipal Securities Rulemaking Board and any successor municipal securities disclosure website approved by the Securities and Exchange Commission.

“Event of Default” has the meaning given to such term in Section 8.01.

“Extraordinary Expenses” means extraordinary and nonrecurring expenses. Termination payments under the Commodity Swap shall not be considered an Extraordinary Expense.

“Failed Remarketing” means, (a) with respect to the Bonds on any Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) with respect to the Bonds (i) if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, Issuer has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of such existing Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date.

“Favorable Opinion of Bond Counsel” means an Opinion of Bond Counsel to the effect that an action proposed to be taken is not prohibited by this Indenture and will not adversely affect the tax exempt status of interest on the applicable Bonds.

“Fiduciary” or “Fiduciaries” means the Trustee, the Paying Agents, the Bond Registrar, the Calculation Agents, the Custodian, the tender agent or any or all of them, as may be appropriate.

“Final Fixed Rate Conversion Date” means, with respect to a Series of Bonds, the date on which such Bonds begin to bear interest for a Term Rate Period which extends to the Final Maturity Date for such Series of Bonds.

“Final Maturity Date” means (a) with respect to the Series 2021A Bonds, [________ 1, 20__] and (b) with respect to any other Series of Bonds, the final Maturity Date set forth in the related Supplemental Indenture.

“Fiscal Year” means (a) the twelve-month period beginning on January 1 of each year and ending on the next December 31, or (b) such other twelve-month period established by Issuer from time to time, upon Written Notice to the Trustee, as its fiscal year.

“Fitch” means Fitch Ratings, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.
“Fund” or “Funds” means, as the case may be, each or all of the Funds established in Section 5.02 and Section 4.15.

“General Reserve Fund” means the General Reserve Fund established in Section 5.02.

“Government Obligations” means:

(a) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, obligations unconditionally guaranteed as to principal and interest by the United States of America, and evidences of ownership interests in such direct or unconditionally guaranteed obligations; or

(b) Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which: (i) are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice; (ii) are rated in the two highest Rating Categories of S&P and Moody’s; and (iii) are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in clause (a) above, which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable notice, as appropriate; [or

(c) Any other bonds, notes or obligations of the United States of America or any agency or instrumentality thereof which, if deposited with the Trustee for the purpose described in Section 12.01(c), will result in a rating on the Bonds which are deemed to have been paid pursuant to Section 12.01(c) that is in the same Rating Category of the obligations listed in subsection (a) above.]

However, the Trustee shall have no responsibility for monitoring any ratings or determining whether any bond, note or other obligation is or continues to be a Government Obligation.

“Indenture” means this Trust Indenture as from time to time amended or supplemented by Supplemental Indentures in accordance with the terms hereof.

“Index” means the LIBOR Index (or a replacement Index for the LIBOR Index specified in a Supplemental Indenture), the SIFMA Index or CPI, as applicable.

“Index Rate” means a LIBOR Index Rate (or a replacement Index Rate for the LIBOR Index Rate specified in a Supplemental Indenture), a SIFMA Index Rate or a CPI Index Rate, as applicable.

“Index Rate Determination Certificate” means a Written Certificate delivered by Issuer in the form of Exhibit B hereto pursuant to Section 2.09(b)(i) or Section 2.14(b)(i).
“Index Rate Period” means, with respect to a Series of Bonds, an Interest Rate Period during which the Bonds of such Series bear interest at an Index Rate.

“Index Rate Reset Date” means, with respect to a Series of Bonds bearing interest at an Index Rate, each date on which the applicable Index Rate is determined by the Calculation Agent based on the change in the applicable Index as of such date, which shall be the date or dates so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate Period (including, by way of example and not limitation, Wednesday of each week, the first Business Day of each calendar month or the first Business Day of a calendar quarter).

“Index Rate Tender Date” means, with respect to any Index Rate Period for a Series of Bonds, the date so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate, which date shall be the next occurring Mandatory Purchase Date, which shall be a date not later than the Final Maturity Date. The Index Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a Business Day is specified as an Index Rate Tender Date, then the Index Rate Tender Date shall be the Business Day immediately following such specified date.

“Initial Interest Rate Period” means, with respect to the Series 2021A Bonds, the period from the Initial Issue Date to and including [__________, 20__]; provided that in the event that the Series 2021A Bonds are redeemed (or purchased in lieu of redemption) pursuant to Section 4.03, the Initial Interest Rate Period shall end on and as of the day of such redemption or purchase.

“Initial Issue Date” means the date of initial issuance and delivery of the Series 2021A Bonds.

“Initial Mandatory Purchase Date” means [__________, 20__], which is the day following the last day of the Initial Interest Rate Period for the Series 2021A Bonds.

“Interest Payment Date” means, with respect to any Bond (a) during any Daily Interest Rate Period, Weekly Interest Rate Period or Index Rate Period for such Bond, the first Business Day of each Month, (b) during any Term Rate Period for such Bond, each [_______] 1 and [_______] 1, provided that the first interest payment made for any Term Rate Period shall be at least 90 days from the first day of such period, (c) during any Commercial Paper Interest Rate Period for such Bond, the day next succeeding the last day of each CP Interest Term, (d) any redemption date for such Bond, (e) any Mandatory Purchase Date for such Bond, and (f) the Maturity Date of such Bond.

“Interest Rate Determination Certificate” means a certificate of Issuer delivered to the Trustee no later than 30 days prior to the effective date of the new Interest Rate Period, setting forth the next occurring Mandatory Purchase Date and, for each Series of the Series 2021A Bonds, the applicable Interest Rate Period, maturities and redemption provisions, and (i) for Bonds bearing interest at a Term Rate, the interest rate(s) for such Bonds and (ii) for Bonds bearing interest at an Index Rate, the Index, the CPI, the Index Rate Reset Date, the Applicable Spread, the CPI Interest Period and the Applicable Factor for such Bonds.
“Interest Rate Period” means a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period. Notwithstanding anything contained herein to the contrary, all Bonds of a Series shall bear interest for the same Interest Rate Period. All Interest Rate Periods for all Series of Bonds shall terminate on the first to occur of the day prior to (a) the next occurring Mandatory Purchase Date or (b) the Final Maturity Date.

“Interest Rate Swap” means (a) the ISDA Master Agreement, the Schedule thereto and each Confirmation thereunder between Issuer and the Interest Rate Swap Counterparty, pursuant to which Issuer agrees to make payments to the Interest Rate Swap Counterparty at a fixed rate of interest and the Interest Rate Swap Counterparty agrees to make payments to Issuer at a floating rate equal to the rate of interest borne by a related Series of Variable Rate Bonds, in each case with a notional amount equal to the Outstanding principal amount of such Series of Bonds, and (b) any replacement interest rate swap agreement permitted by Section 2.13(b); provided that, as long as no Interest Rate Swap has been entered into by Issuer, all references herein to the Interest Rate Swap, Interest Rate Swap Counterparty, Interest Rate Swap Receipts and Interest Rate Swap Payments (including, without limitation, Section 7.15) shall be disregarded.

“Interest Rate Swap Counterparty” means the counterparty to the Interest Rate Swap or replacement Interest Rate Swap, and any successor and assign thereof, that meets the requirements of Section 2.13(b).

“Interest Rate Swap Payments” means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the Interest Rate Swap Counterparty by Issuer.

“Interest Rate Swap Receipts” means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to Issuer by the Interest Rate Swap Counterparty.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended. References herein to sections of the Internal Revenue Code include the applicable U.S. Treasury Regulations promulgated thereunder.

“Issue Date” means (a) with respect to the Series 2021A Bonds, the Initial Issue Date, and (b) with respect to any other Series of Bonds, the date of initial issuance and delivery of such Series.

“Issuer” means California Community Choice Financing Authority, a joint powers authority organized pursuant to the laws of the State of California, including without limitation, the Act.

“Issuer Custodial Agreement” means the Custodial Agreement dated as of the Initial Issue Date among the Commodity Swap Counterparty, Issuer, [the Trustee] and the Custodian.

“Issuer Purchase Account” means the Account by that name in the Bond Purchase Fund.
DISCUSS LIBOR SUBSTITUTION] [“LIBOR” means, (a) with respect to the initial issuance of a Series of Bonds bearing interest at a LIBOR Index Rate, the Intercontinental Exchange London interbank offered rate for United States dollar deposits for the applicable LIBOR Period, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on the second Business Day preceding the Issue Date for such Series of Bonds, and (b) for each Index Rate Reset Date, the Intercontinental Exchange London interbank offered rate for United States dollar deposits for the applicable LIBOR Period, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on the second Business Day preceding such Index Rate Reset Date. If such rate is not then reported by such source or otherwise ceases to be available as of any Index Rate Reset Date, then “LIBOR” means a substitute or replacement index designated by Issuer in writing (with notice to, and which is available to, the Calculation Agent) in compliance with Section 2.09(b)(v); provided that if LIBOR has been permanently discontinued, the Calculation Agent will use, as directed by Issuer, as a substitute for LIBOR and for each future Index Rate Reset Date, the alternative reference rate selected by the central bank, reserve bank, monetary authority or any similar institution (including any committee or working group thereof) that is consistent with accepted market practice (the “Alternative Rate”). As part of such substitution, the Calculation Agent will, as directed in writing by Issuer, make such adjustments to the Alternative Rate or the spread thereon, as well as the Business Day convention, Index Rate Reset Dates and related provisions and definitions ("Adjustments"), in each case that are consistent with accepted market practice for the use of such Alternative Rate for debt obligations such as the Bonds; provided that in the event that there is no clear market consensus as to whether any rate has replaced LIBOR in customary market usage, Issuer will appoint in its sole discretion an independent financial advisor to determine an appropriate Alternative Rate, and any Adjustments, and the decision of the independent financial advisor will be binding on Issuer, the Calculation Agent and the Bondholders.

“LIBOR Index” means LIBOR.

“LIBOR Index Rate” means, as determined pursuant to Section 2.09(b)(i) for each applicable Index Rate Reset Date, a per annum rate of interest equal to the sum of (a) the Applicable Spread plus (b) the product of (i) the LIBOR Index as of the day of determination multiplied by (ii) the Applicable Factor.

“LIBOR Index Rate Period” means, with respect to a Series of Bonds, each period during which such Bonds bear interest at a LIBOR Index Rate.

“LIBOR Period” means, with respect to the Bonds during any LIBOR Index Rate Period, the designated maturity of LIBOR (e.g., one month, three months) so specified in the applicable Supplemental Indenture or the applicable Index Rate Determination Certificate with respect to such LIBOR Index Rate Period.

“Liquidity Facility” means, with respect to a Series of Bonds, a standby bond purchase agreement, letter of credit or similar facility providing liquidity support for such Series of Bonds and any Alternate Liquidity Facility provided in substitution of the foregoing.
“Liquidity Facility Provider” means, with respect to a Liquidity Facility for a Series of Bonds, the commercial bank or other financial institution providing the same and any other commercial bank or other financial institution issuing or providing (or having primary obligation for, or acting as agent for the financial institutions obligated under) an Alternate Liquidity Facility.

“Mandatory Purchase Date” means (i) the Initial Mandatory Purchase Date, and (ii) any subsequent date on which Bonds are required to be purchased pursuant to Section 4.13 or Section 4.14, respectively.

“Maturity Date” means, with respect to a Series of Bonds, each date upon which principal of such Bonds is due, as set forth in (a) Section 2.02(b) with respect to the Series 2021 A Bonds, and (b) the related Supplemental Indenture with respect to any other Series of Bonds.

“Maximum Lawful Rate” means the maximum interest rate permitted by applicable law.

“Maximum Monthly Amount” has the meaning assigned to such term in the Receivables Purchase Provisions.

“Maximum Rate” means the lesser of 12% per annum and the Maximum Lawful Rate.

“Member” has the meaning given to such term in the recitals to this Indenture.

“Minimum Daily Interest Rate” means, with respect to a Series of Bonds bearing interest at a Daily Rate, the minimum rate determined by the Remarketing Agent by 10:00 a.m. New York City time pursuant to Section 2.05.

“Month” means a calendar month.

“Moody’s” means Moody’s Investors Service, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.

“MWh” means a megawatt-hour.

“Net Participant Shortfall Amount” means, for any Month in which a Project Participant fails to pay the full amount due under its Energy Supply Contract in time for such amount to be credited to the Revenue Fund for application pursuant to Section 5.05(a) and the full amount due by such Project Participant is not otherwise paid by the Energy Supplier pursuant to the Receivables Purchase Provisions, an amount equal to the positive result (if any) of (i) such Project Participant’s Payment Deficiency Index Baseline for such Month minus (ii) the greater of (a) such Project Participant’s Payment Deficiency Fixed Baseline for such Month, and (b) the actual amount paid by such Project Participant for such Month, provided that if the foregoing does not result in a positive number, then no Net Participant Shortfall Amount will exist for such Project Participant for such Month.
“Operating Expenses” means, to the extent properly allocable to Energy Project, (a) Issuer’s expenses for operation of Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Energy Purchase Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of Issuer’s obligations under the Energy Supply Contracts; (b) any other current expenses or obligations required to be paid by Issuer under the provisions of this Indenture (other than Debt Service on the Bonds) or by law or required to be incurred under or in connection with the performance of Issuer’s obligations under the Energy Supply Contracts; (c) fees payable by Issuer with respect to any Remarking Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses incurred by Issuer with respect to the Bonds, this Indenture, or the Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by Issuer with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by Issuer, including, without limitation, directors and officers liability insurance. [Commodity Swap Payments,] litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

“Operating Fund” means the Operating Fund established in Section 5.02.

“Opinion of Bond Counsel” means a written opinion of either Bond Counsel or Special Tax Counsel (or written opinions of both of them) addressed to Issuer and delivered to the Trustee.

“Opinion of Counsel” means an opinion signed by an attorney or firm of attorneys (who may be counsel to Issuer) selected by Issuer.

“Optional Purchase Date” means any date on which Bonds are to be purchased pursuant to Section 4.11.

“Outstanding” when used with reference to Bonds, means as of any date, Bonds theretofore or thereupon being authenticated and delivered under this Indenture except:

(a) Bonds cancelled (or portions thereof deemed to have been cancelled) by the Trustee at or prior to such date;

(b) Bonds (or portions of Bonds) for the payment or redemption of which moneys, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Indenture and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), provided that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice as provided in Article IV;

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article III or Section 4.06 or Section 11.06;
(d) Bonds deemed to have been paid as provided in Section 12.01(b); and

(e) Bonds (or portions thereof) deemed to have been purchased pursuant to the provisions of any Supplemental Indenture in lieu of which other Bonds have been authenticated and delivered as provided in such Supplemental Indenture.

“Outstanding Sold Receivables” means, in respect of any Project Participant, Call Receivables and Put Receivables that have been sold to the Energy Supplier pursuant to the Receivables Purchase Provisions, together with any interest accrued thereon pursuant to the Receivables Purchase Provisions, less any such Call Receivables, Put Receivables and interest thereon that has been previously paid or repurchased from the Energy Supplier pursuant to the Receivables Purchase Provisions.

“Participants” means those broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as Securities Depository.

“Paying Agent” means the Trustee, its successors and assigns, and any other bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds, and its successor or successors hereafter appointed in the manner provided in this Indenture.

“Payment Deficiency Fixed Baseline” means, for any Month and any Project Participant, the amount such Project Participant would have been required to pay for such Month under its Energy Supply Contract if the Contract Price for such Month had been determined using an Index Price (as defined under its Energy Supply Contract) for such Month equal to the Fixed Price (as defined under the Commodity Swap) for such Month.

“Payment Deficiency Index Baseline” means, for any Month and any Project Participant, the amount required to be paid by such Project Participant for such Month under its Energy Supply Contract.

“Person” means any and all natural persons, firms, associations, corporations and public bodies.

“Pledged Funds” means (a) the Project Fund, (b) the Revenue Fund, (c) the Debt Service Fund, (d) the General Reserve Fund and (e) the Assignment Payment Fund, in each case including the Accounts in each of such Funds.

“Power Supply Contract” means (a) each of the contracts for the sale by Issuer of Energy from or attributable to Energy Project to a Project Participant identified on Schedule I, as such contracts may be amended from time to time in accordance with the terms thereof and this Indenture, and (b) any other contract for the sale by Issuer of Energy from or attributable to Energy Project entered into by a Person that becomes a Project Participant in accordance with the assignment and novation requirements set forth in Section 7.10(iv), as such contract may be amended from time to time in accordance with the terms thereof and this Indenture.
“Prevailing Market Conditions” means, without limitation, the following factors: existing short term market rates for securities, the interest on which is excluded from gross income for federal income tax purposes or, as applicable, qualifies the issuer thereof to receive Subsidy Payments or similar benefit; indexes of such short term rates; the existing market supply and demand and the existing yield curves for short term and long term securities for obligations of credit quality comparable to the Bonds, the interest on which is excluded from gross income for federal income tax purposes; general economic conditions and financial conditions that may affect or be relevant to the Bonds; and such other facts, circumstances and conditions as the Remarketing Agent, in its sole discretion, shall determine to be relevant to the remarketing of the Bonds at the Purchase Price thereof.

“Principal Installment” means, as of any date of calculation, (a) the principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established, or (b) the unsatisfied balance (determined as provided in Section 5.10(c)) of any Sinking Fund Installments due on a certain future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments.

“Project Administration Fee” has the meaning assigned to such term in the Energy Supply Contracts.

“Project Fund” means the Project Fund established in Section 5.02.

“Project Participant” means (a) a Public Agency that is an Energy purchaser under a Power Supply Contract and identified as a “Project Participant” in Schedule I and (b) any other Person that enters into an Energy Supply Contract with Issuer in accordance with the assignment and novation requirements set forth in Section 7.10(iv).

“Public Agency” means a state, a governmental or political subdivision of a state and a corporate instrumentality or public corporation of a state or a subdivision of a state, including without limitation any of their departments or agencies, counties, county boards of education, county superintendents of schools, cities, public corporations, public districts, public commissions or joint powers authorities.

“Purchase Date” means an Optional Purchase Date or a Mandatory Purchase Date, as the case may be.

“Purchase Price” means (a) with respect to any Purchased Bond to be purchased on an Optional Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date plus accrued and unpaid interest thereon, unless such Optional Purchase Date is an Interest Payment Date for such Bond, in which case interest on such Bond shall not be included in the Purchase Price of such Bond but shall be paid to the Owner of such Bond in accordance with the interest payment provisions thereof, (b) except as provided in clause (c) below, with respect to any Purchased Bond to be purchased on a Mandatory Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date, and (c) in the case of a purchase of a Bond bearing interest at a Term Rate pursuant to Section 4.14 with respect to which the new Interest Rate Period commences prior to the day originally established as the last day of the
preceding Term Rate Period, the optional redemption price for such Bond set forth in
Section 4.03(b) or in an applicable Supplemental Indenture which would have been applicable to
such Bond if the preceding Term Rate Period had continued to the day originally established as its
last day. Accrued interest due on any Bonds to be purchased on a Mandatory Purchase Date shall
be paid from amounts on deposit in the Debt Service Account of the Debt Service Fund on such
date in accordance with Section 5.07.

“Purchased Bonds” means any Bonds required to be purchased on a Purchase Date.

“Put Option Notice” has the meaning set forth in Section 2.1[(a)] of the Receivables
Purchase Provisions.

“Put Receivable” has the meaning set forth in Section 1.1 of the Receivables Purchase
Provisions.

“Qualified Investments” means any of the following investments, if and to the extent that
the same are rated (or whose financial obligations to Issuer receive credit support from an entity
rated) at least at the credit rating of the Energy Supplier, or, if the Energy Supplier is not rated, the
guarantor of the Energy Supplier (except for (c) below), to the extent rated by such Rating Agency,
and are at the time authorized for such purpose by law:

(a) Direct obligations of the United States government or any of its agencies;

(b) Obligations guaranteed as to principal and interest by the United States
government or any of its agencies;

(c) Certificates of deposit, including those placed by a third party pursuant to
an agreement between the Trustee and the Issuer, and other evidences of deposit at state
and federally chartered banks, savings and loan institutions or savings banks, including the
Trustee or any of its affiliates (each having the highest short term rating by each Rating
Agency then rating the Bonds) deposited and collateralized as required by law;

(d) Repurchase agreements entered into with the United States or its agencies
or with any bank, broker dealer or other such entity, including the Trustee and its affiliates,
so long as the obligation of the obligated party is secured by a perfected pledge of
obligations that meet the conditions set forth in the preamble to this definition of Qualified
Investments;

(e) Guaranteed investment contracts, forward delivery agreements, interest rate
exchange agreements or similar agreements providing for a specified rate of return over a
specified time period; provided, however, that guaranteed investment contracts, forward
delivery agreements or similar agreements shall meet the conditions set forth in the
preamble to this definition of Qualified Investments;

(f) Direct general obligations of a state of the United States, or a political
subdivision or instrumentality thereof, having general taxing powers;
(g) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by or on behalf of the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of principal of and interest on such obligations;

(h) Money market funds registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, and having a rating in the highest Rating Category by each Rating Agency at the time of investment, including money market funds of the Trustee and funds for which the Trustee or its affiliates (i) provide investment or other management services and (ii) serve as investment manager, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (A) the Trustee or its affiliate receives or collects fees from such funds for services rendered, and (B) services performed by the Trustee pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliate; or

(i) Any other investments permitted by applicable law for the investment of the funds of Issuer;

provided, that Issuer shall be responsible for monitoring ratings and determining whether any investment made is or continues to be a Qualified Investment, and the Trustee shall have no responsibility whatsoever for monitoring ratings or determining whether any investment is or continues to be a Qualified Investment.

"Rating Agency" means Fitch, Moody’s or S&P, or any other rating agency so designated in a Supplemental Indenture that, at the time, rates the Bonds.

"Rating Category" means one or more of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such rating category or categories by a numerical modifier, a plus or minus, or otherwise.

"Rating Confirmation" means written evidence satisfactory to Issuer, so designated in a Written Statement of Issuer delivered to the Trustee, that upon the effectiveness of any proposed action, all Outstanding Bonds will continue to be assigned at least the same or equivalent ratings (including the same or equivalent numerical, plus or minus, or other modifiers within a Rating Category) by each Rating Agency then rating such Outstanding Bonds.

"Rebate Payments" means those portions of moneys or securities held in any Fund or Account that are required to be paid to the United States Treasury Department under the requirements of Section 148(f) of the Internal Revenue Code.

"Receivables Purchase Provisions" means (i) initially, the provisions set forth in [Exhibit G] to the Energy Purchase Agreement, and (ii) any successor provisions for the purchase and sale of receivables in respect of amounts due and unpaid under the Energy Supply Contracts and provided in a Written Notice of Issuer to the Trustee.
“Redemption Account” means the Redemption Account in the Debt Service Fund established in Section 5.02.

“Redemption Price” means, with respect to any Bond, the amount payable upon redemption thereof pursuant to such Bond or this Indenture.

“Reference Month” means, with respect to each CPI Index Rate Reset Date, the third calendar month preceding such CPI Index Rate Reset Date.

“Refunding Bonds” means a Series of Bonds authorized to be issued pursuant to Section 2.01(c) for the sole purposes of refunding or defeasing (in accordance with Article XII) in whole a Series of Bonds then Outstanding, and paying the Cost of Acquisition with respect to such Refunding Bonds.

“Regular Record Date” has the meaning given to such term in Section 3.08.

“Remarketing Agent” means, with respect to any Series of Bonds, the entity appointed as the remarketing agent for such Series pursuant to the related Remarketing Agreement and, if applicable, the related Supplemental Indenture.

“Remarketing Agreement” means, with respect to any Series of Bonds, the remarketing agreement, if any, entered into between Issuer and the Remarketing Agent for such Series of Bonds.

“Remarketing Proceeds Account” means the Account by that name within the Bond Purchase Fund.


“Remediation Remarketing Purchase Price” has the meaning given to such term in the Remarketing Provisions.

“Re-Pricing Agreement” means the Re-Pricing Agreement dated as of the Initial Issue Date between Issuer and the Energy Supplier, as the same may be amended in accordance with its terms.

“Reset Period” means Initial Reset Period or Reset Period, as the case may be, each as defined in the Re-Pricing Agreement.

“Responsible Officer” means, when used with respect to the Trustee, the Custodian or the Calculation Agent, as applicable, any managing director, president, vice president, senior associate, associate or other officer of the Trustee, the Custodian or the Calculation Agent, respectively, within its designated corporate trust office for delivery of notice specified in Section 12.10 (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom
any corporate trust matter is referred at such office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

“Revenue Fund” means the Revenue Fund established in Section 5.02.

“Revenues” means:

(a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by Issuer from or attributable or relating to the ownership and operation of Energy Project, including all revenues attributable or relating to Energy Project or to the payment of the costs thereof received or to be received by Issuer under the Energy Supply Contracts and the Energy Purchase Agreement or otherwise payable to the Trustee for the account of Issuer for the sale and/or transmission of Energy or otherwise with respect to Energy Project;

(b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund;

(c) any Commodity Swap Receipts received by the Trustee on behalf of Issuer; and

(d) any Subsidy Payments received by the Trustee, on behalf of the Issuer, in accordance with Section 3.10 of this Indenture.

provided that, the term “Revenues” shall not include: (u) any Termination Payment pursuant to the Energy Purchase Agreement; (v) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to Section 5.11; (w) amounts paid by the Project Participants in respect of the Project Administration Fee; (x) any Assignment Payment received from the Energy Supplier; (y) Interest Rate Swap Receipts; and (z) payments received from the Energy Supplier pursuant to the Receivables Purchase Provisions [in respect of Call Receivables].

“S&P” means S&P Global Ratings, a division of S&P Global Inc., its successors and assigns, and, if such entity shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.

“Scheduled Debt Service Deposits” means the required monthly deposits to the Debt Service Account in the Debt Service Fund and the required cumulative deposits to the Debt Service Account in the Debt Service Fund in respect of the Debt Service coming due on the Bonds on each Bond Payment Date pursuant to Section 5.05(a)(iii) and as set forth on Schedule II hereto. Schedule II shall be revised (a) by Written Notice of Issuer delivered at the time of its designation.
of each subsequent Interest Rate Period, and (b) by each Supplemental Indenture authorizing the issuance of Refunding Bonds.

“Securities Depository” means DTC, or its nominee, and its successors and assigns.

“Series” means the Series 2021A Bonds and any other Bonds designated as a Series authorized to be issued hereunder pursuant to Section 2.01.

“Series 2021A Bonds” means the Energy Project Revenue Bonds, Series 2021A] authorized to be issued under Section 2.01. [NTD: Additional series to be added as necessary, e.g., 2021A-1, 2021A-2, etc.]

“SIFMA Index” means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, provided, however, that, with respect to the initial issuance of a Series of Bonds bearing interest at a SIFMA Index Rate, the SIFMA Municipal Swap Index in effect on the Issue Date shall remain in effect until the first Index Rate Reset Date. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by Issuer in compliance with Section 2.09(b)(v).

“SIFMA Index Rate” means a per annum rate of interest equal to the sum of (a) the SIFMA Index then in effect, plus (b) the Applicable Spread.

“SIFMA Index Rate Period” means, with respect to a Series of Bonds, an Index Rate Period during which such Bonds bear interest at the SIFMA Index Rate.

“Sinking Fund Installment” means, for the Series 2021A Bonds, the amount so designated in Section 4.02, and with respect to any other Series of Bonds, each date, if any, on which such Bonds are subject to mandatory sinking fund redemption as set forth in the applicable Supplemental Indenture.

“Special Record Date” has the meaning given to such term in Section 3.08.

“Special Tax Counsel” means Orrick, Herrington & Sutcliffe LLP or any other counsel of nationally recognized standing in matters pertaining to the tax exempt status of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States, and selected by Issuer. Bond Counsel may serve as Special Tax Counsel.
[“Specified Project Participant” has the meaning assigned to such term in Section 1.1 of the Receivables Purchase Provisions.][**NTD: ADD TERM TO RECEIVABLES PURCHASE PROVISIONS?**]

“State” means the State of California.

“Subsidy Payments” means (a) with respect to a Series of Bonds issued under [Section 54AA of the Internal Revenue Code, the amounts relating to such Series of Bonds which are payable by the federal government under Section 6431 of the Internal Revenue Code, which the Issuer has elected to receive under Section 54AA(g)(1) of the Internal Revenue Code,] and (b) with respect to a Series of Bonds issued under any other provision of the Internal Revenue Code that creates a substantially similar direct-pay subsidy program, the amounts relating to such Series of Bonds which are payable by the federal government under the applicable provision of the Internal Revenue Code which the Issuer has elected to receive under the applicable provisions of the Internal Revenue Code.

“Supplemental Indenture” means any indenture supplemental to or amendatory of this Indenture executed and delivered by Issuer and the Trustee in accordance with Article X.

“Swap Payment Deficiency” means, as of any date, (a) the amount of the next Commodity Swap Payment expected to become due, minus (b) the amount on deposit in the Commodity Swap Payment Fund; provided, however, that if such difference is a negative number, then the Swap Payment Deficiency shall be zero.

“Tax Agreement” means the Tax Certificate and Agreement of Issuer with respect to the Bonds dated as of the Initial Issue Date.

“Term Rate” means, with respect to a Series of Bonds, a fixed interest rate for each maturity of such Bonds established in accordance with Section 2.07.

“Term Rate Conversion Date” means, with respect to a Series of Bonds, the date on which such Bonds begin to bear interest at a Term Rate pursuant to the provisions of Section 2.07, including each date on which a new Term Rate Period is established for such Bonds and the Final Fixed Rate Conversion Date with respect to such Bonds.

“Term Rate Period” means, with respect to a Series of Bonds, each period during which a Term Rate is in effect for such Bonds.

“Term Rate Tender Date” means (a) with respect to the initial Term Rate Period for the Series 2021A Bonds maturing on the Final Maturity Date, the Initial Mandatory Purchase Date, and (b) with respect to any other Term Rate Period for a Series of Bonds, the date so specified in the related Supplemental Indenture or notice of Conversion to or continuation of such Term Rate Period provided by Issuer pursuant to Section 2.07(b), as applicable, which date shall be a Mandatory Purchase Date pursuant to Section 4.13 and shall not be later than the Final Maturity Date for such Series of Bonds. The Term Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a
Business Day is specified as a Term Rate Tender Date, then the Term Rate Tender Date shall be the Business Day immediately following such specified date.

“Termination Payment” has the meaning given to such term in the Energy Purchase Agreement.

“Trust Estate” means (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of Issuer in, to and under the Energy Supply Contracts, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment (e) all right, title and interest of Issuer in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of Issuer in, to and under the Energy Supplier Guaranty, (g) all right, title and interest of Issuer in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of Issuer in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

“Trustee” means [Trustee] and its successor or successors and any other corporation or national banking association which may at any time be substituted in its place pursuant to this Indenture.

“Undelivered Bond” means any Bond which constitutes an Undelivered Bond under the provisions of Section 4.16.

“Underwriter” means (a) with respect to the Series 2021A Bonds, Morgan Stanley & Co. LLC, and (b) with respect to any other Series of Bonds, the municipal securities broker dealer engaged by Issuer to underwrite such Series of Bonds.

“Variable Rate Bonds” means Bonds bearing interest at a Daily Interest Rate, a Weekly Interest Rate, CP Interest Term Rates or an Index Rate.

“Weekly Interest Rate” means, with respect to a Series of Bonds, a variable interest rate established for such Bonds in accordance with Section 2.06.

“Weekly Interest Rate Period” means, with respect to a Series of Bonds, each period during which a Weekly Interest Rate is in effect for such Bonds.

“Written Certificate,” “Written Direction,” “Written Instrument,” “Written Notice,” “Written Request” and “Written Statement” of Issuer means in each case an instrument in writing signed on behalf of Issuer by an Authorized Officer thereof. Any such instrument and any supporting opinions or certificates may, but need not, be combined in a single instrument with any other instrument, opinion or certificate, and the two or more so combined shall be read and construed so as to form a single instrument. Any such instrument may be based, insofar as it
relates to legal, accounting or engineering matters, upon the opinion or certificate of counsel, consultants, accountants or engineers, unless the Authorized Officer signing such Written Certificate, Direction, Notice, Request or Statement knows, or in the exercise of reasonable care should know, that the opinion or certificate with respect to the matters upon which such Written Certificate, Direction, Notice, Request or Statement may be based, as aforesaid, is erroneous. The same Authorized Officer, or the same counsel, consultant, accountant or engineer, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different Authorized Officers, counsel, consultants, accountants or engineers may certify to different facts, respectively. Every Written Certificate, Direction, Notice, Request or Statement of Issuer, and every certificate or opinion of counsel, consultants, accountants or engineers provided for herein shall include:

(a) a statement that the person making such certificate, direction, notice, request, statement or opinion has read the pertinent provisions of this Indenture to which such certificate, direction, notice, request, statement or opinion relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate, direction, notice, request, statement or opinion is based;

(c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; and

(d) with respect to any statement relating to compliance with any provision hereof, a statement whether or not, in the opinion of such person, such provision has been complied with.

Section 1.02. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Indenture.

Section 1.03. Rules of Construction. Except where the context otherwise requires, words of any gender shall include correlative words of the other genders; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, trusts, corporations or governments or agencies or political subdivisions thereof. The term “include” and its derivations are not limiting.

References herein to contracts and agreements include all amendments or supplements thereto made in accordance with the terms thereof, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof. References herein to Articles, Sections, Exhibits and Schedules are references to the Articles, Sections, Exhibits and Schedules of and to this Indenture.

Section 1.04. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.
Section 1.05. Consents. Whenever the consent, notice or direction of the Bondholders, the Energy Supplier, the Commodity Swap Counterparty, the Interest Rate Swap Counterparty or Issuer is required under the terms of this Indenture, such consent, notice or direction, as applicable, shall be evidenced by a written instrument providing for such consent, delivered to the Trustee.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01. Authorization of Bonds and Refunding Bonds; Application of Proceeds.

(a) For the purpose of financing the Cost of Acquisition of Energy Project, the $[____________] [Energy Project Revenue Bonds, Series 2021A], which shall bear interest during the Initial Interest Rate Period at a Term Rate and which shall be entitled to the benefit, protection and security of this Indenture are hereby authorized to be issued.

[NTD: Other rate modes to be added as necessary.]

(b) The proceeds of the Series 2021A Bonds shall be deposited with the Trustee and disbursed, transferred and applied as provided in a Written Request of Issuer delivered to the Trustee upon the issuance of the Series 2021A Bonds.

(c) In addition to the Series 2021A Bonds, there are hereby authorized to be issued by Supplemental Indenture one or more Series of Refunding Bonds for the purpose of refunding any Series of Bonds then Outstanding hereunder, subject to the following conditions:

(i) the Supplemental Indenture providing for issuance a Series of Refunding Bonds shall set forth (A) the Bonds to be refunded, (B) the Series designation and aggregate principal amount of the Refunding Bonds, (C) the Maturity Dates (which shall be no later than the Final Maturity Date) and any Sinking Fund Installments for the Refunding Bonds, (D) the Scheduled Debt Service Deposits for such Bonds, (E) the initial Interest Rate Period for such Bonds, and if such Interest Rate Period is to be an Index Rate Period, the applicable Index or CPI, and the Applicable Spread and, if the Index is the LIBOR Index, the Applicable Factor, and (F) such other terms and provisions concerning the Refunding Bonds as are not inconsistent with this Indenture;

(ii) a Series of Refunding Bonds issued in a Term Rate Period may be sold at a premium;

(iii) the proceeds of a Series of Refunding Bonds (including any sale premium) shall be used exclusively to pay the Cost of Acquisition relating to the Refunding Bonds;
(iv) if such Bonds are Variable Rate Bonds, and if such Bonds are to bear interest at a Daily Interest Rate, a Weekly Interest Rate or CP Interest Term Rates, Issuer shall have appointed a Remarketing Agent for such Bonds and shall have entered into an Interest Rate Swap with respect to such Series of Bonds;

(v) the delivery to the Trustee of an Accountant’s Certificate verifying ongoing cash flow sufficiency and Termination Payment sufficiency, provided that the Trustee shall have no duty or obligation to review the contents thereof and shall receive such Accountant’s Certificate solely as a repository on behalf of Bondholders;

(vi) the delivery to the Trustee of the requests, opinions and documents required by Section 2.03(c); and

(vii) the receipt by the Trustee of a Rating Confirmation with respect to any Bonds Outstanding prior to the issuance of such Refunding Bonds that will remain Outstanding after the issuance thereof.

(d) No bonds, other than the Bonds and any Refunding Bonds, may be issued pursuant to this Indenture.

Section 2.02. Terms of Series 2021A Bonds; Payment. (a) The Series 2021A Bonds shall be dated as of the date of the initial authentication and delivery thereof, shall bear interest from such date, payable on each Interest Payment Date, and shall be subject to redemption as provided in Article IV. The principal and Redemption Price of and interest on the Series 2021 A Bonds shall be payable by the Trustee at its designated corporate trust office and such banking institution is hereby appointed Paying Agent and Bond Registrar for the Bonds; provided that interest on the Bonds may be paid, at the option of Issuer, by check payable to the order of the Person entitled thereto, and mailed by first-class mail, postage prepaid, to the address of such Person as shall appear on the books of the Bond Registrar, which the Bond Registrar shall keep for such purposes at its designated corporate trust office. Upon the written request of any Owner of one million dollars ($1,000,000) or more in aggregate principal amount of Bonds received by the Trustee prior to the Regular Record Date (which shall remain in effect until rescinded in writing by such Owner), interest shall be paid on each Interest Payment Date by wire transfer of immediately available funds to an account maintained in any bank or trust company in the United States of America that is a member of the Federal Reserve System designated in writing by such Owner. The principal and Redemption Price of and interest on all Bonds shall also be payable at any other place which may be provided for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by this Indenture. Issuer shall provide Written Notice to the Trustee of the appointment of any additional Paying Agent.

(b) The Series 2021 A Bonds shall mature on the Maturity Dates in the principal amounts, subject to Sinking Fund Installments as set forth in Section 4.02, the Initial Interest Rate Period
for the Series 2021 A Bonds shall be a Term Rate Period, and the Series 2021 A Bonds shall bear interest during such Interest Rate Period at the rates, all as set forth below:

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
</tr>
</thead>
</table>

[NTD: Additional series to be added as necessary.]

(c) Interest on the Series 2021 A Bonds shall be payable to the date on which such Bonds shall have been paid in full. Interest on the Series 2021 A Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(d) The initial interest rates for the Bonds of each Series and the determination for such Bonds of the Daily Interest Rate, the Weekly Interest Rate, the Index Rate or the Term Rate and each CP Interest Term and CP Interest Term Rate by the applicable Calculation Agent or Remarketing Agent for such Bonds, as the case may be, and shall be conclusive and binding upon Issuer, the Trustee, the Remarketing Agent and the Owners of the Bonds.

(e) In connection with any Term Rate Conversion Date of a Series of Bonds, the Sinking Fund Installments, if any, established for such Series pursuant to the applicable Supplemental Indenture may be re designated as Maturity Dates and Sinking Fund Installments for such Bonds on the Term Rate Conversion Date for such Bonds as provided for in the applicable Supplemental Indenture.

Section 2.03. Conditions for Issuance of Bonds. The Bonds of each Series shall be executed by Issuer and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered upon the Written Direction of Issuer, but only upon the receipt by the Trustee of:

(a) A copy, certified by an Authorized Officer, of a resolution and/or evidence of any other official actions taken by Issuer that authorize the execution and delivery of the Bonds, together with a Written Request as to the authentication and delivery of the Bonds, signed by an Authorized Officer;
(b) An Opinion or Opinions of Counsel to the effect that (i) Issuer has the right and power to authorize and enter into this Indenture, the Energy Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap, and (ii) the Energy Supply Contracts, the Energy Purchase Agreement and the Commodity Swap have been duly and lawfully authorized, executed and delivered by Issuer, are in full force and effect and (assuming due authorization, execution and delivery by, and validity and binding effect upon, the other parties thereto) are valid, binding and enforceable upon Issuer in accordance with their respective terms, and no other authorization for the Energy Supply Contracts, the Energy Purchase Agreement, the Commodity Swap or any Interest Rate Swap is required; provided, that such Opinion(s) of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors’ rights generally, and judicial discretion and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy;

(c) An Opinion of Bond Counsel to the effect that (i) the Bonds constitute the valid and binding limited obligations of Issuer; (ii) this Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, Issuer; (iii) this Indenture creates a valid pledge of the Trust Estate to secure the payment of principal of and interest on the Bonds, of the Revenues and any other amounts (including proceeds of the sale of the Bonds) held by the Trustee in any fund or account established pursuant to this Indenture, except for the Administrative Fee Fund and Rebate Payments held in the Operating Fund, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture; and (iv) the Bonds are not a lien or charge upon the funds or property of Issuer except to the extent of the aforementioned pledge; provided, that such Opinion of Bond Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium reorganization, arrangement, fraudulent conveyance, or other similar laws relating to or affecting creditors’ rights generally and judicial discretion and the valid exercise of the sovereign police powers of the State, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases, and may state that no opinion is being rendered as to the availability of any particular remedy under the financing documents;

(d) An opinion of Special Tax Counsel to the effect that, if applicable, interest on the Bonds of such Series is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code and is exempt from State of California personal income taxes (it being agreed that if Special Tax Counsel also serves as Bond Counsel, the opinion described in this clause (d) may be consolidated with the Opinion of Bond Counsel described in the preceding clause (c));

(e) Executed or certified copies of the Energy Supply Contracts with each of the Project Participants specified on Schedule I;
(f) An opinion of counsel to each of the initial Project Participants to the effect that the Energy Supply Contract between such Project Participant and Issuer has been duly authorized, executed and delivered by such Project Participant, is the valid and binding obligation of such Project Participant and is enforceable in accordance with its terms, subject to customary assumptions and exceptions with respect to enforceability, with such exceptions as may be agreed to by Issuer and the Underwriter;

(g) A rating on the Bonds from at least one Rating Agency.

Section 2.04. Initial Interest Rate Period; Subsequent Interest Rate Periods. (a) The Series 2021A Bonds shall be initially issued in the Interest Rate Period set forth in Section 2.02(b). Upon the purchase of the Series 2021A Bonds on a Mandatory Purchase Date, the Interest Rate Period for each Series of the Series 2021A Bonds may be converted to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, an Index Rate Period, a Term Rate Period or a combination thereof, as provided in this Article II. In the event that two or more Interest Rate Periods are so established, the Series 2021A Bonds shall, by Supplemental Indenture, be divided into separate Series or sub-Series corresponding to such Interest Rate Periods.

(b) In the manner hereinafter provided, the term of each Series of Bonds will be divided into consecutive Interest Rate Periods during each of which such Bonds shall bear interest at the Daily Interest Rate, the Weekly Interest Rate, CP Interest Term Rates, Term Rates or an Index Rate; provided, however, that the Interest Rate Period shall be the same for all Bonds of a Series, and no Bond shall bear interest in excess of the Maximum Rate. The Interest Rate Period for any Series 2021A Bonds (other than the Initial Interest Rate Period for the Series 2021A Bonds) shall be established pursuant to the Interest Rate Determination Certificate or related Supplemental Indenture and terminate on the day preceding the next occurring Mandatory Purchase Date.

Section 2.05. Daily Interest Rate Period.

(a) Determination of Daily Interest Rates. During each Daily Interest Rate Period for a Series of Bonds, the Bonds of such Series shall bear interest at the Daily Interest Rate, which shall be determined by the Remarketing Agent on or before 11:00 a.m., New York City time, on each Business Day for such Business Day. The Remarketing Agent will advise the Trustee by Electronic Means of the final Daily Interest Rate by 12:00 noon, New York City time, on the day such rate is determined. The Daily Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by the Bonds of the applicable Series, would enable the Remarketing Agent to sell the Bonds of such Series on that Business Day at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. With respect to any day that is not a Business Day, the Daily Interest Rate for that day shall be the same Daily Interest Rate established for the immediately preceding Business Day. In the event the Remarketing Agent fails to establish a Daily Interest Rate for any Business Day, then the Daily Interest Rate for that Business Day shall be the Daily Interest Rate for the immediately preceding Business Day if the Daily Interest Rate for the immediately preceding Business Day was established by the Remarketing Agent. Subject to the
provisions of Section 2.10(d), in the event that the Daily Interest Rate for the immediately preceding Business Day was not determined by the Remarketing Agent, or in the event that the Daily Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the Daily Interest Rate shall be deemed to be equal to the SIFMA Index on the Business Day such Daily Interest Rate would otherwise be determined as provided herein for such Daily Interest Rate Period.

(b) **Conversion to Daily Interest Rate Period.** Subject to Section 2.10, at any time the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at a Daily Interest Rate. Such direction of the Issuer shall specify the proposed effective date of such Conversion to a Daily Interest Rate Period, which shall be a Business Day not earlier than the [30th] day following the second Business Day after receipt by the Trustee of the Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, such direction shall be accompanied by a form of notice required by Section 2.05(c) and the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Daily Interest Rate Period. Upon the Conversion of any Series of Bonds to the Daily Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate borne by such Series of Bonds shall be a Daily Interest Rate as provided in Section 2.10(a).

(c) **Notice of Conversion to Daily Interest Rate Period.** Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Daily Interest Rate Period as provided in Section 2.05(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Daily Interest Rate Period to the Owners of such Bonds not less than 30 days prior to the proposed effective date of such Daily Interest Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds will be converted to a Daily Interest Rate Period unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Daily Interest Rate Period; (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

**Section 2.06. Weekly Interest Rate Period.**

(a) **Determination of Weekly Interest Rates.** The Weekly Interest Rate for the initial Weekly Interest Rate Period following the issuance of a Series of Bonds bearing
interest in a Weekly Interest Rate Period or Conversion of a Series of Bonds to a Weekly Interest Rate Period shall be determined on or prior to the first day of such Weekly Interest Rate Period and shall apply to the period commencing on the first day of such Weekly Interest Rate Period and ending on the succeeding Wednesday (whether or not a Business Day). Thereafter, during each Weekly Interest Rate Period for a Series of Bonds, the Bonds of such Series shall bear interest at the Weekly Interest Rate, which shall be determined by the Remarketing Agent by no later than 5:00 p.m., New York City time, on Wednesday of each week during such Weekly Interest Rate Period, or if such day shall not be a Business Day, then on the next succeeding Business Day. Each Weekly Interest Rate so determined shall apply to the period commencing on Thursday (whether or not a Business Day) and ending on the next succeeding Wednesday (whether or not a Business Day), unless such Weekly Interest Rate Period shall end on a day other than Wednesday, in which event the last Weekly Interest Rate for such Weekly Interest Rate Period shall apply to the period commencing on Thursday (whether or not a Business Day) and ending on the last day of such Weekly Interest Rate Period. The Weekly Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by the Bonds of the applicable Series, would enable the Remarketing Agent to sell the Bonds of such Series on the effective date of such rate at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Interest Rate for any week, then the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week if the Weekly Interest Rate for such preceding week was determined by the Remarketing Agent. Subject to the provisions of Section 2.10(d), in the event that the Weekly Interest Rate for the immediately preceding week was not determined by the Remarketing Agent, or in the event that the Weekly Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the interest rate for such week shall be equal to the SIFMA Index on the day such Weekly Interest Rate would otherwise be determined as provided herein for such Weekly Interest Rate Period.

(b) Conversion to Weekly Interest Rate Period. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at a Weekly Interest Rate. Such direction of the Issuer shall specify the proposed effective date of such Conversion to a Weekly Interest Rate Period, which shall be a Business Day not earlier than the later of (a) the 30th day following the second Business Day after receipt by the Trustee of such Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, such direction shall be accompanied by a form of notice required by Section 2.06(c) and the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Weekly Interest Rate Period. Upon Conversion of any Series of Bonds to the Weekly Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture,
the interest rate borne by such Series of Bonds shall be a Weekly Interest Rate as provided in Section 2.06(a).

(c)  Notice of Conversion to Weekly Interest Rate. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Weekly Interest Rate Period as provided in Section 2.06(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Weekly Interest Rate Period to the Owners of such Bonds not less than 30 days prior to the proposed effective date of such Weekly Interest Rate Period. Such notice shall state: (i) that the Interest Rate Period on such Bonds will be converted to a Weekly Interest Rate unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Weekly Interest Rate Period; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Weekly Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

Section 2.07.  Term Rate Period.

(a)  Determination of Term Rates. For each Term Rate Period for a Series of Bonds, (i) the Issuer may by Written Notice to the Trustee delivered in connection with a Term Rate Conversion Date establish one or more Maturity Dates for the Bonds of such Series and Sinking Fund Installments for any maturities of the Bonds of such Series, and (ii) each maturity of the Bonds of such Series shall bear interest at a Term Rate; provided that the Term Rate, Maturity Dates and Sinking Fund Installments for each maturity of Bonds of any Series upon initial issuance of such Bonds, if any, shall be specified in [this Indenture or] a Supplemental Indenture providing for the issuance of such Series of Bonds. The Term Rate for each maturity of Bonds of a Series bearing interest in the Term Rate Period shall be determined by the Underwriter or the Remarketing Agent, as applicable, on a Business Day no later than the Issue Date or the Term Rate Conversion Date for such Series of Bonds, as applicable. Subject to the provisions of Section 2.07(d), each Term Rate shall be the rate of interest per annum determined by the Underwriter or the Remarketing Agent, as applicable, to be the minimum interest rate which, if borne by the Bonds of the applicable Series and maturity, would enable the Underwriter or the Remarketing Agent, as the case may be, to sell such Bonds and maturity on such date at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. If, for any reason, with respect to any Series of Bonds being converted to a Term Rate Period, the Term Rate for such Term Rate Period is not determined by the Remarketing Agent on or prior to the first day of such Term Rate Period, then the Interest Rate Period for the Bonds of the applicable Series shall be a Weekly Interest Rate Period and such Weekly Interest Rate Period shall continue until such time as the Interest Rate Period for such Series of Bonds shall have been converted to a Daily Interest Rate Period, a
Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period as provided herein.

(b) **Conversion to or Continuation of Term Rate Period.** Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at Term Rates. Such direction of the Issuer shall specify (i) the proposed effective date of the Term Rate Period, which date shall be a Business Day not earlier than the 30th day following receipt by the Trustee of such Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture; (ii) the last day of such Term Rate Period, which day shall be either the day immediately prior to the Final Maturity Date for the applicable Series of Bonds, or a day which both immediately precedes a Business Day and is at least one hundred eighty one (181) days after the effective date of the Term Rate Period; (iii) with respect to any such Term Rate Period, may specify redemption prices and periods different than those set forth in this Indenture or the applicable Supplemental Indenture providing for the issuance of such Series of Bonds, subject to the Favorable Opinion of Bond Counsel as provided in Section 2.07(b)(iii). In addition, such direction shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Term Rate Conversion Date. Upon Conversion of any Series of Bonds to the Term Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate or rates borne by such Series of Bonds shall be Term Rates as provided in Section 2.07(a). The day following the last day of any Term Rate Period for a Series of Bonds shall be a Term Rate Tender Date for such Series of Bonds. After the Final Fixed Rate Conversion Date for a Series of Bonds, the Bonds of such Series shall no longer be subject to or have the benefit of the provisions of Section 4.11 through 4.22.

(c) **Notice of Conversion to or Continuation of Term Rate.** Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Term Rate Period as provided in Section 2.07(b), the Trustee shall give notice by first-class mail of the Conversion of such Bonds to bear interest in a (or the establishment of another) Term Rate Period for a Series of Bonds to the Owners of the Bonds of such Series not less than thirty (30) days prior to the proposed effective date of such Term Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds shall be converted to, or continue to be, a Term Rate Period unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Term Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the Term Rate Conversion Date; (ii) that such Bonds are subject to mandatory tender for purchase on the Term Rate Conversion Date and setting forth the applicable Purchase Price and the place of delivery for purchase of such Bonds; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert...
the Interest Rate Period for the Bonds of such Series to a Term Rate Period as provided in Section 2.10(b)]; and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(d)  [Sale at Premium or Discount. Notwithstanding the provisions of Section 2.07(a), the Term Rate for each maturity of any Series of Bonds as initially issued, or the Term Rate for each maturity of any other Series of Bonds upon Conversion to a Term Rate Period, shall be the rate of interest per annum determined by the Underwriter or the Remarketing Agent, as applicable, to be the interest rate which, if borne by the Bonds of such Series and maturity, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds of such Series and maturity at a price (without regard to accrued interest) which will result in the lowest net interest cost for the Bonds of such Series and maturity, after taking into account any premium or discount at which the Bonds of such Series and maturity are sold by the Underwriter or the Remarketing Agent, as applicable, provided that:

(i) The Underwriter or the Remarketing Agent, as applicable, certifies in writing to the Trustee and the Issuer that the sale of the Bonds of such Series at the interest rate and premium or discount specified by the Underwriter or the Remarketing Agent, as applicable, is expected to result in the lowest net interest cost for such Bonds;

(ii) Issuer consents in writing to the sale of the Bonds of such Series at such premium or discount;

(iii) In the case of the Bonds of such Series to be sold at a premium, the Underwriter or the Remarketing Agent, as applicable, shall transfer the amount of such premium to the Trustee for deposit into such Funds and Accounts as shall be specified in a Written Direction of the Issuer;

(iv) On or before the date of determination of the Term Rates for the Bonds of such Series, the Issuer delivers to the Trustee and the Remarketing Agent a form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Term Rate Conversion Date; and

(v) On or before the Conversion Date, a Favorable Opinion of Bond Counsel shall have been delivered.]

Section 2.08. Commercial Paper Interest Rate Periods.

(a) Determination of CP Interest Terms and CP Interest Term Rates. During each Commercial Paper Interest Rate Period for a Series of Bonds, each Bond of such Series shall bear interest during each CP Interest Term for such Bond at the CP Interest Term Rate for such Bond. The CP Interest Term and the CP Interest Term Rate for each Bond need not be the same for any two Bonds of such Series, even if determined on the same date. Each of such CP Interest Terms and CP Interest Term Rates for each Bond
shall be determined by the Remarketing Agent no later than the first day of each CP Interest Term. Each CP Interest Term shall be for a period of days within the range or ranges announced as possible CP Interest Terms no later than 9:30 a.m., New York City time, on the first day of each CP Interest Term by the Remarketing Agent. Each CP Interest Term for each Bond of the applicable Series shall be a period of not more than two hundred seventy (270) days, determined by the Remarketing Agent to be the period which, together with all other CP Interest Terms for all Bonds of the applicable Series then Outstanding, will result in the lowest overall interest expense on such Bonds over the next succeeding two hundred seventy (270) days. Each CP Interest Term shall end on either a day which immediately precedes a Business Day or on the day immediately preceding the Final Maturity Date for the applicable Series of Bonds. If, for any reason, a CP Interest Term for any Bond cannot be so determined by the Remarketing Agent, or if the determination of such CP Interest Term is held by a court of law to be invalid or unenforceable, then such CP Interest Term shall be thirty (30) days, but if the last day so determined shall not be a day immediately preceding a Business Day, such CP Interest Term shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the Final Maturity Date for the applicable Series of Bonds, shall end on the day immediately preceding such Final Maturity Date. In determining the number of days in each CP Interest Term, the Remarketing Agent shall take into account the following factors: (i) existing short term, tax exempt market rates and indices of such short term rates; (ii) the existing market supply and demand for short term tax exempt securities; (iii) existing yield curves for short term and long term tax exempt securities for obligations of credit quality comparable to the Bonds of the applicable Series; (iv) general economic conditions; (v) industry economic and financial conditions that may affect or be relevant to the Bonds of the applicable Series; (vi) the CP Interest Terms of other Bonds of the applicable Series; and (vii) such other facts, circumstances and conditions pertaining to financial markets as the Remarketing Agent, in its sole discretion, shall determine to be relevant.

The CP Interest Term Rate for each CP Interest Term for each Bond in a Commercial Paper Interest Rate Period shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by such Bond, would enable the Remarketing Agent to sell such Bond on the effective date of such rate at a price equal to the principal amount thereof. Subject to the provisions of Section 2.10(d), if, for any reason, a CP Interest Term Rate for any Bond in a Commercial Paper Interest Rate Period is not so established by the Remarketing Agent for any CP Interest Term, or if such CP Interest Term Rate is determined by a court of law to be invalid or unenforceable, then the CP Interest Term Rate for such CP Interest Term shall be a rate per annum equal to the SIFMA Index on the first day of such CP Interest Term.

(b) Conversion to Commercial Paper Interest Rate Period. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at CP Interest Term Rates. Such Written Direction of the Issuer shall specify (i) the proposed effective date of the Commercial Paper Interest Rate Period, which shall be a Business Day not earlier than the thirtieth (30th) day following the second Business Day after receipt by
the Trustee of such direction, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, the Written Direction of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Commercial Paper Interest Rate Period. Upon Conversion of any Series of Bonds to the Commercial Paper Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, each Bond of such Series shall bear interest at a CP Interest Term Rate applicable to the CP Interest Term then in effect for such Bond, which may differ from the CP Interest Term Rate and CP Interest Term applicable to other Bonds of such Series.

(c) **Notice of Conversion to CP Interest Term Rates.** Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Commercial Paper Interest Rate Period as provided in Section 2.08(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Commercial Paper Interest Rate Period to the Owners of the Bonds of the applicable Series not less than thirty (30) days prior to the proposed effective date of such Commercial Paper Interest Rate Period. Such notice shall state: (i) that such Bonds shall bear interest at CP Interest Term Rates unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Commercial Paper Interest Rate Period; and (iii) that Bonds of such Bonds are subject to mandatory tender for purchase on such proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(d) **Conversion From Commercial Paper Interest Rate Period.** Subject to Section 2.10(b), at any time during a Commercial Paper Interest Rate Period for a Series of Bonds, the Issuer may elect, pursuant to Section 2.05(b), Section 2.06(b), Section 2.07(b) or Section 2.09(c), that such Bonds no longer shall bear interest at CP Interest Term Rates and shall instead bear interest at a Daily Interest Rate, a Weekly Interest Rate, a Term Rate or an Index Rate, as specified in such election. In connection with any such election, and notwithstanding any provision contained in this Section 2.08 to the contrary, each CP Interest Term established by the Remarketing Agent for the Bonds shall end on the same date in order to facilitate the Conversion of such Bonds. The date on which all CP Interest Terms determined for the Bonds end shall be the last day of the then current Commercial Paper Interest Rate Period and the day next succeeding such date shall be the effective date of the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period or Index Rate Period elected by the Issuer for such Bonds.

**Section 2.09. Index Rate Periods.**
(a) **Determination of Applicable Spread and Applicable Factor.** In connection with the issuance of a Series of Bonds bearing interest in an Index Rate Period, the Applicable Spread and, if such Index Rate Period is a LIBOR Index Rate Period, the Applicable Factor applicable to such Series of Bonds for the duration of the initial Index Rate Period for such Series of Bonds shall be specified in this Indenture or in the Supplemental Indenture providing for the issuance of such Series of Bonds. In connection with the Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, the Remarketing Agent shall determine the Applicable Spread and, if such Index Rate Period is a LIBOR Index Rate Period, the Applicable Factor applicable to such Bonds for the duration of the applicable Index Rate Period, and shall specify such Applicable Spread and, if applicable, the Applicable Factor and the LIBOR Period selected by the Issuer in the Index Rate Determination Certificate for the applicable Index Rate Period. The Applicable Spread and, if applicable, the Applicable Factor for an Index Rate Period shall each be such amount as shall result in the minimum Index Rate (as a rate of interest per annum) which, if borne by the Bonds of the applicable Series as of the first day of the applicable Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds on the first day of the applicable Index Rate Period at a price (without regard to accrued interest) equal to 100% of the principal amount thereof.

(b) **Determination of Index Rate.**

(i) During each Index Rate Period for a Series of Bonds, such Bonds shall bear interest at an Index Rate, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such Interest Rate Period.

(ii) With respect to each LIBOR Index Rate Period, (A) the Calculation Agent shall determine the LIBOR Index by 11:00 a.m., London time, on the second Business Day preceding the Index Rate Reset Date, and (B) the LIBOR Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. With respect to each SIFMA Index Rate Period, (A) the Calculation Agent shall determine the SIFMA Index by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day on the next succeeding Business Day, and (B) the SIFMA Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. The Calculation Agent shall also calculate and provide to the Issuer and the Trustee the amount of interest due and payable on each Interest Payment Date for the applicable Series of Bonds at least two (2) Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each Index Rate so determined to the Issuer and the Trustee by Electronic Means not later than each Index Rate Reset Date. Upon the written request of any Holder, the Trustee shall confirm the Index Rate then in effect. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in an Index Rate Period will be rounded, if necessary, to the nearest ten thousandth of a percentage point (i.e., to five decimal places) with five hundred thousandths of a percentage
point rounded upward, and all dollar amounts used in or resulting from such
calculation of interest on such Bonds while in an Index Rate Period will be rounded
to the nearest cent (with one-half cent being rounded upward).

(iii) In determining the interest rate that any Bond shall bear as provided
in this Section 2.09, neither the Underwriter nor the Remarketing Agent, as
applicable, the Calculation Agent, nor the Trustee shall have any liability to the
Issuer or the Holder of such Bond, except for its own negligence or willful
misconduct.

(iv) If, during any Index Rate Period, the Index or rate used to determine
an Index Rate is not reported by the relevant source at the time necessary for
determination of such Index Rate or otherwise ceases to be available, the Issuer or
its independent financial advisor (as applicable) shall determine a replacement or
substitute Index Rate (as applicable), including any Alternative Rate and any
Adjustments, and promptly provide the same via Electronic Means to the
Calculation Agent and the Trustee, together with the effective date of the substitute
or replacement Index Rate, which substitute or replacement must be consistent with
any corresponding substitute or replacement index designated pursuant to the
relevant Interest Rate Swap.

(c) Conversion to or Continuation of Index Rate Period. Subject to Section
2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee
and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at
an Index Rate. Such direction of the Issuer shall specify the proposed effective date of the
Index Rate Period, which date shall be a Business Day not earlier than the 30th day
following the second Business Day after receipt by the Trustee of the Written Direction of
the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest
Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following
the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds
of such Series are subject to optional redemption pursuant to Section 4.03(b) or an
applicable Supplemental Indenture; (ii) the last day of such Index Rate Period, which day
shall be either the day immediately prior to the Final Maturity Date for the applicable Series
of Bonds, or a day which immediately precedes a Business Day. In addition, such direction
of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel
proposed to be delivered on the Conversion Date.

(d) Notice of Conversion to or Continuation of Index Rate. Following timely
receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds
to the Index Rate Period as provided in Section 2.09(b), the Trustee shall give notice by
first-class mail of the Conversion of such Bonds to bear interest in a (or the establishment
of another) Index Rate Period for a Series of Bonds to the Owners of the Bonds of such
Series not less than thirty (30) days prior to the proposed effective date of such Index Rate
Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds shall be
converted to, or continue to be, an Index Rate Period unless (A) the Issuer rescinds its
election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate
Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the Index Rate Conversion Date; (ii) that such Bonds are subject to mandatory tender for purchase on the Index Rate Conversion Date and setting forth the applicable Purchase Price and the place of delivery for purchase of such Bonds; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

Section 2.10. Notice of Conversion. (a) In the event that the Issuer shall elect to convert the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Term Rate Period, an Index Rate Period or a Commercial Paper Interest Rate Period as provided in this Article II, then the Written Direction of the Issuer required to be delivered to the Trustee by the applicable provision of this Article II shall be given by registered or certified mail, or by Electronic Means.

(b) Notwithstanding anything in this Article II, in connection with any Conversion of the Interest Rate Period for a Series of Bonds, the Issuer shall have the right to deliver to the Trustee and the Remarketing Agent (if any), on or prior to 10:00 a.m., New York City time, on the [third] Business Day preceding the effective date of any such Conversion a Written Direction of the Issuer to the effect that the Issuer elects to rescind its election to make such Conversion. If the Issuer rescinds its election to make such Conversion, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue to bear interest in the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period, Commercial Paper Interest Rate Period or Index Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion, and the Term Rate Tender Date or Index Rate Tender Date, if applicable, for any such Series of Bonds shall also remain unchanged from that in effect immediately prior to such proposed Conversion.

(c) No Conversion of a Series of Bonds from one Interest Rate Period to another, and no continuation or establishment of a new Term Rate Period or Index Rate Period, shall take effect under this Indenture unless each of the following conditions, to the extent applicable, shall have been satisfied:

(i) the Trustee shall have received a Favorable Opinion of Bond Counsel with respect to such Conversion;

(ii) with respect to any Series of Bonds bearing interest at an Index Rate or a Term Rate, no Conversion may occur with respect to such Bonds earlier than (A) the Business Day following the last day of the applicable Interest Rate Period or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture;

(iii) in the case of any Conversion of the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period or a Commercial
Paper Interest Rate Period, prior to the Conversion Date the Issuer shall have appointed a Remarketing Agent and shall have executed and delivered a Remarketing Agreement with respect to such Series of Bonds, and shall have obtained a Liquidity Facility with respect to such Series of Bonds as required by Section 2.11;

(iv) in the case of a Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, prior to the Conversion Date the Issuer shall have appointed a Calculation Agent and executed and delivered a Calculation Agent Agreement with respect to such Series of Bonds; and

(v) the remarketing proceeds available on the Conversion Date shall not be less than the amount required to purchase all of the Bonds of such Series at the applicable Purchase Price (unless the Issuer in its sole discretion elects to transfer to the Trustee the amount of such deficiency on or before the Conversion Date).

(d) If any condition to the Conversion of the Interest Rate Period for a Series of Bonds shall not have been satisfied, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue in the Daily Interest Rate Period, Weekly Interest Rate Period, Index Rate Period, Term Rate Period, or Commercial Paper Interest Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion (provided, that the period of any such continuing Term Rate Period shall be one year), and the Bonds of such Series shall continue to be subject to mandatory tender for purchase on the date which would have been the effective date of the Conversion as provided in Section 4.14.

Section 2.11. Liquidity Facility. In connection with the issuance of any Series of Bonds, or the Conversion of any Series of Bonds, to bear interest in a Daily Interest Rate Period, a Weekly Interest Rate Period, an Index Rate Period, Term Rate Period, or Commercial Paper Interest Rate Period, the Issuer shall obtain a Liquidity Facility for such Series of Bonds, and the Issuer may elect to obtain a Liquidity Facility for any Series of Bonds bearing interest in a Term Rate Period or an Index Rate Period. Provisions concerning any Liquidity Facility so obtained with respect to such Series of Bonds shall be set forth in a Supplemental Indenture.

Section 2.12. Provisions Regarding Commodity Swap. (a) In connection with Energy Project, Issuer shall enter into the initial Commodity Swap with the Commodity Swap Counterparty. The following shall apply to such Commodity Swap:

(i) The method for the calculation of the Commodity Swap Payments and Commodity Swap Receipts, as applicable, and the scheduled payment dates therefor, are set forth in Schedule III hereto.

(ii) Commodity Swap Payments shall be made by the Trustee (for the account of Issuer) from the Commodity Swap Payment Fund.

(iii) Commodity Swap Receipts shall be payable directly to the Trustee (for the account of Issuer) and shall be deposited directly into the Revenue Fund.
(b) The following shall apply with respect to restrictions on replacement and termination of the Commodity Swap:

(i) Issuer agrees that it will not exercise any right to declare an early termination date under the Commodity Swap unless either (A) Issuer has entered into a replacement Commodity Swap in accordance with clause (ii) or (iii) below, and such replacement Commodity Swap will be effective as of such early termination date and cover price exposure from and after such early termination date, or (B) Issuer causes or permits the termination of the Energy Purchase Agreement prior to or as of such early termination date.

(ii) Issuer may replace the Commodity Swap (and any related guaranty of the Commodity Swap Counterparty’s obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty upon delivery to the Trustee of a Rating Confirmation.

(iii) If the Commodity Swap is subject to termination (or, in the case of clause (B) below, is terminated) by either party in accordance with its terms, then (A) Issuer may, subject to clause (i) above, terminate the Commodity Swap if Issuer has the right to do so, and (B) Issuer may enter into a replacement Commodity Swap with an alternate Commodity Swap Counterparty without Rating Confirmation, but only if the replacement Commodity Swap is identical in all material respects to the existing Commodity Swap, except for the identity of the Commodity Swap Counterparty, and (1) the replacement Commodity Swap Counterparty (or its credit support provider under the Commodity Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) the rating then assigned by each Rating Agency to the Bonds, or (2) the Commodity Swap Counterparty provides such collateral and security arrangements as Issuer shall determine to be necessary, and (3) in either case, the replacement Commodity Swap Counterparty enters into a replacement Energy Supplier Custodial Agreement with the Energy Supplier and the Custodian that is identical in all material respects to the existing Energy Supplier Custodial Agreement.

(c) The following shall apply with respect to the mandatory termination of the Commodity Swap and Energy Purchase Agreement:

(i) Upon the occurrence of a Commodity Swap Mandatory Termination Event, Issuer shall (A) notify the Energy Supplier of such event pursuant to Section 17.5(a) of the Energy Purchase Agreement, and (B) in accordance with Section 17.5(a) of the Energy Purchase Agreement, use its good faith efforts to replace the Commodity Swap with an alternate Commodity Swap, subject to the conditions of subsection (b)(ii) above, during the 120 day replacement period contemplated by Section 17.5(a) of the Energy Purchase Agreement or any period that the Custodian, under the terms of the Custodial Agreements, is making payments (an “Alternate Replacement Period”), provided that any such Alternate Replacement Period shall end on the earlier of the date on which the Custodian
ceases making payments under the Custodial Agreements and the date of the sixth consecutive monthly payment by the Custodian.

(ii) If Issuer is unable to enter into an alternate Commodity Swap pursuant to clause (i)(B) above during such 120-day replacement period or Alternate Replacement Period, as applicable, Issuer shall (A) designate an Early Termination Date for the Energy Purchase Agreement in accordance with Section 17.4(b) of the Energy Purchase Agreement, with such Early Termination Date occurring immediately at the end of such replacement period, and (B) unless the Commodity Swap has been terminated automatically pursuant to Section 6(a) thereof, designate an early termination date for the Commodity Swap pursuant to Section 6(a) thereof with such early termination date occurring concurrently with the Early Termination Date under the Energy Purchase Agreement described in clause (A) above.

(iii) A “Commodity Swap Mandatory Termination Event” occurs if the Commodity Swap becomes terminable by Issuer pursuant to Part 1(h)(ii) (failure to pay after cure period) of the Schedule to the Commodity Swap.

Section 2.13. Provisions Regarding Interest Rate Swap. (a) In connection with the issuance of any Variable Rate Bonds, Issuer shall enter into the initial Interest Rate Swap with the Interest Rate Swap Counterparty. The following shall apply to the Interest Rate Swap:

(i) The method for the calculation of the Interest Rate Swap Payments and Interest Rate Swap Receipts, as applicable, and the scheduled payment dates therefor are set forth in the Interest Rate Swap;

(ii) Interest Rate Swap Payments shall be made by the Trustee (for the account of Issuer) from the Debt Service Account on parity with principal and interest payments on Bonds; and

(iii) Interest Rate Swap Receipts shall be payable directly to the Trustee (for the account of Issuer) and shall be deposited directly into the Debt Service Account.

(b) The following shall apply with respect to restrictions on replacement and termination of the Interest Rate Swap:

(i) Issuer agrees that it will not exercise any right to declare an early termination date under the Interest Rate Swap unless either (A) Issuer has entered into a replacement Interest Rate Swap in accordance with clause (ii) and (iii) below, and such replacement Interest Rate Swap will be effective as of such early termination date and cover interest rate exposure from and after such early termination date, or (B) in all other cases, the Energy Purchase Agreement will terminate prior to or as of such early termination date.

(ii) Issuer may replace the Interest Rate Swap (and any related guaranty of the Interest Rate Swap Counterparty’s obligations thereunder) with a similar agreement for the
(iii) If the Interest Rate Swap is subject to termination (or, in the case of clause (B) below, is terminated) by either party in accordance with its terms, then (A) Issuer may, subject to clause (i) above, terminate the Interest Rate Swap if Issuer has the right to do so, and (B) Issuer may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without Rating Confirmation, but only if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap, except for the identity of the Interest Rate Swap Counterparty, and (1) the alternate Interest Rate Swap Counterparty (or its credit support provider under the Interest Rate Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) at least as highly as the rating then assigned by each Rating Agency to the Bonds, or (2) the Interest Rate Swap Counterparty provides such collateral and security arrangements as Issuer shall determine to be necessary.

Section 2.14. [CPI Index Rate Periods.] [The provisions of this Section 2.14 shall apply to Index Rate Bonds bearing interest in a CPI Index Rate Period.

(a) Determination of Applicable Spread. In connection with the issuance of a Series of Bonds bearing interest at a CPI Index Rate, or the Conversion of the Interest Rate Period for a Series of Bonds to a CPI Index Rate Period, Issuer shall determine the Applicable Spread for such Bonds for the duration of the applicable CPI Index Rate Period, and shall specify such Applicable Spread in the Index Rate Determination Certificate for the applicable CPI Index Rate Period. The Applicable Spread for a CPI Index Rate Period shall be such amount as shall result in the minimum interest rate(s) which, if borne by the Bonds of the applicable Series as of the first day of the applicable CPI Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds at a price equal to 100% of the aggregate principal amount of such Bonds on the first day of the applicable CPI Index Rate Period.

(b) Determination of CPI Index Rate.

(i) During any CPI Index Rate Period for a Series of Bonds, such Bonds shall bear interest at the CPI Index Rate, determined using the CPI Index Rate Formula and the Applicable Spread, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such CPI Index Rate Period.

(ii) The Calculation Agent shall by noon, New York time, on each CPI Index Rate Reset Date (or, if such CPI Index Rate Reset Date is not a Business Day, on the next succeeding Business Day) determine the CPI Index Rate for the CPI Interest Rate Period that begins on such CPI Index Rate Reset Date. The Calculation Agent shall also calculate and provide to Issuer and the Trustee the amount of interest due and payable on each Interest Payment Date for the applicable
Series of Bonds at least two Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each CPI Index Rate so determined to Issuer and the Trustee by Electronic Means not later than each CPI Index Rate Reset Date. Upon the written request of any Holder, the Trustee shall confirm the CPI Index Rate then in effect. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in a CPI Index Rate Period will be rounded, if necessary, to the nearest hundred thousandth of a percentage point (i.e., to five decimal places) with five millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on such Bonds while in an Index Rate Period will be rounded to the nearest cent (with one-half cent being rounded upward).

(iii) During any CPI Index Rate Period, interest shall be computed on the basis of a 360-day year of twelve 30 day calendar months.

(iv) In determining the interest rate that any Bond shall bear as provided in this Section 2.14, neither the Underwriter nor the Remarketing Agent, as applicable, the Calculation Agent, nor the Trustee shall have any liability to Issuer or the Holder of such Bond, except for its negligence or willful misconduct.

(v) If the CPI is not reported on Bloomberg CPURNSA for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, but the CPI has otherwise been published by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate. If the CPI is not published by the BLS for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, the Calculation Agent will determine the CPI with reference to an index number based on the last twelve-month change in the CPI available and announced by the Department of the Treasury for its Inflation-Indexed Securities as described at 62 Federal Register 846-874 (January 6, 1997) (the “Treasury Inflation-Indexed Securities Regulation”) or, if no such index number is announced, in accordance with general market practice at the time.

(vi) In calculating CPIt and CPIt-12, the Calculation Agent will use the most recently available value of the CPI determined as described above on the applicable Interest Reset Date, even if such value has been adjusted from a prior reported value for the relevant month. However, if a value of CPIt and CPIt-12 used by the Calculation Agent on any Interest Reset Date to determine the interest rate on the CPI Bonds (an “Initial CPI Value”) is subsequently revised by the BLS, the Calculation Agent will continue to use the Initial CPI Value for all purposes hereunder, and the interest rate on the related CPI Index Rate Reset Date, as determined based upon the Initial CPI Value, will not be revised.
(c) **CPI Index Rate Continuation.**

(i) On any Mandatory Purchase Date pursuant to Section 4.13 and unless Issuer has given notice with respect to the Conversion of the Bonds to an Interest Rate Period other than the CPI Index Rate Period, Issuer may establish a new CPI Index Rate Period and a new CPI Index Rate for the Bonds with such right to be exercised by delivery of an Index Rate Continuation Notice to the Trustee no less than 30 days prior to the effective date of the new CPI Index Rate Period. The CPI Index Rate Continuation Notice shall be accompanied by a letter of Bond Counsel to the effect that Bond Counsel expects to be able to deliver a Favorable Opinion of Bond Counsel on the effective date of the new CPI Index Rate Period.

(ii) Any establishment of a new CPI Index Rate and CPI Index Rate Period for a Series of Bonds pursuant to paragraph (i) above must comply with the following conditions:

(A) the first day of such new CPI Index Rate Period must be a Mandatory Purchase Date for such Bonds pursuant to the provisions of Section 4.13, and such Bonds shall be required to be tendered for purchase on such date;

(B) the first day of such new CPI Index Rate Period must be a Business Day; and

(C) no new CPI Index Rate shall become effective unless (x) the Favorable Opinion of Bond Counsel referred to in paragraph (i) above is delivered on the first day of the new CPI Index Rate Period and (y) there is no Failed Remarketing on the Mandatory Purchase Date on which such new CPI Index Rate Period is to become effective.

(iii) Upon receipt by the Trustee of a CPI Index Rate Continuation Notice from an Authorized Officer, as soon as practicable, but in any event not less than 10 Business Days prior to the first day of the proposed CPI Index Rate Period, Issuer (or any dissemination agent appointed by Issuer) shall give notice by first class mail or by Electronic Means via EMMA to the Holders of the Bonds of the applicable Series, which notice shall state in substance:

(A) that a new CPI Index Rate Period and CPI Index Rate is to be established for such Bonds and the proposed effective date of such new CPI Index Rate Period (which date shall be the Mandatory Purchase Date for such Bonds pursuant to Section 4.13), and that such new CPI Index Rate Period and CPI Index Rate will become effective on such date if the conditions specified in this Section 2.14 are satisfied on or before such date;

(B) that all Bonds of the applicable Series are subject to mandatory tender for purchase on the applicable Mandatory Purchase Date.
pursuant to Section 4.13 (whether or not the proposed new CPI Index Rate Period becomes effective on such date) at the Purchase Price, which shall be specified therein;

(C) the first day of the new CPI Index Rate Period;

(D) that the new CPI Index Rate Period and CPI Index Rate for the Bonds shall not be established unless a Favorable Opinion of Bond Counsel is delivered to the Trustee on the first day of the new CPI Index Rate Period and no Failed Remarketing occurs on such date;

(E) the CUSIP numbers or other identification information of the Bonds of the applicable Series; and

(F) that, to the extent that there shall be on deposit with the Trustee on the first day of the new CPI Index Rate Period an amount of money sufficient to pay the Purchase Price thereof, all the Bonds not delivered to the Trustee on or prior to such date shall be deemed to have been properly tendered for purchase and shall cease to constitute or represent a right on behalf of the Holder thereof to the payment of principal thereof or interest thereon and shall represent and constitute only the right to payment of the Purchase Price on deposit with the Trustee, without interest accruing thereon after such date.

(d) End of CPI Index Rate Period. In the event Issuer has not given a CPI Index Rate Continuation Notice or other Written Notice with respect to the Conversion of Bonds to an Interest Rate Period other than a CPI Index Rate Period, in either case at the time required by this Indenture, or if the conditions to the effectiveness of a new CPI Index Rate Period and new CPI Index Rate set forth above are not satisfied, including as a result of the Remarketing Agent’s failure to establish a CPI Index Rate as herein provided, then the Bonds of the applicable Series shall be purchased on the applicable Mandatory Purchase Date pursuant to Section 4.13 and a Failed Remarketing shall be deemed to have occurred and the Bonds shall not be remarketed.]

ARTICLE III

GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.01. Medium of Payment; Form and Date; Letters and Numbers. (a) The Bonds shall be payable, with respect to interest, principal and Redemption Price, in any coin or currency
of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds may be issued only in the form of fully registered Bonds without coupons, in Authorized Denominations. The Bonds shall be in substantially the form set forth in Exhibit A hereto, and may be printed, engraved, typewritten or otherwise produced.

(c) Unless Issuer shall otherwise direct, the Bonds shall be numbered from one upward.

Section 3.02. Legends. The Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by Issuer prior to the authentication and delivery thereof.

Section 3.03. Execution and Authentication. [(a) The parties agree that the Electronic Signature of a party to this Indenture, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. The parties agree that any Electronically Signed document (including this Indenture) shall be deemed (i) to be “written” or “be in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “Electronic Signature” or “Electronically Signed” means a manually signed original signature that is then transmitted by Electronic Means and containing, or to which there is affixed, an Electronic Signature.] [NTD: To Be Discussed]

(b) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Treasurer/Controller or any other Authorized Officer of the Issuer, and attested by the manual or facsimile signature of the Secretary of the Issuer or any other Authorized Officer. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated and delivered by the Trustee, such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the Persons who signed such Bonds had not ceased to hold such offices. Any Bond may be signed on behalf of the Issuer by such Persons as at the time of the execution of such Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date borne by the Bonds such Persons may not have been so authorized or have held such office.

(c) The Bonds shall bear thereon a certificate of authentication, in the form set forth in Exhibit A hereto, executed manually by the Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Indenture, and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Indenture and that the Holder thereof is entitled to the benefits of this Indenture.
The parties agree that the Electronic Signature of a party to this Indenture, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. The parties agree that any Electronically Signed Document (including this Indenture) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “Electronic Signature” means a manually signed original signature that is then transmitted by Electronic Means; “transmitted by Electronic Means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, “Electronically Signed Document” means a document transmitted by Electronic Means and containing, or to which there is affixed, an Electronic Signature. Paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of Electronically Signed Documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. [NTD: To Be Discussed]

Section 3.04. Exchange, Transfer and Registry. (a) The Bonds shall be registered and transferred only upon the books of the Bond Registrar, which the Bond Registrar shall keep for such purposes at the designated corporate trust office of the Bond Registrar, and may be transferred by the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney and in compliance with the applicable terms of this Indenture. The transferor shall also provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Upon the registration of transfer of any Bond, Issuer shall issue in the name of the transferee a new Bond or Bonds of the same Series, aggregate principal amount and maturity as the surrendered Bond.

(b) The registered owner of any Bond or Bonds of one or more denominations shall have the right to exchange such Bond or Bonds for a new Bond or Bonds of any denomination then authorized for such Bond or Bonds of the same Series, aggregate principal amount and maturity of the surrendered Bond or Bonds. Such Bond or Bonds shall be exchanged by Issuer for a new Bond or Bonds upon the request of the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender of such Bond or Bonds together with a written instrument requesting such exchange, in form satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney.

(c) Issuer and each Fiduciary may deem and treat the Person in whose name any Bond shall be registered upon the Bond registration books maintained by the Bond Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of
receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither Issuer nor any Fiduciary shall be affected by any notice to the contrary.

Section 3.05. Regulations With Respect to Exchanges and Registration of Transfers. In all cases in which the privilege of exchanging or registering the transfer of Bonds is exercised, Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or registration of transfer shall forthwith be delivered to the Trustee and cancelled or retained by the Trustee. Prior to every such exchange or registration of transfer of Bonds, whether temporary or definitive, Issuer or the Bond Registrar may require the Holder to pay an amount sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. Every applicable person that transfers Bonds in any such exchange or transfer shall also timely provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligation, including without limitation any cost-basis reporting obligations under section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Unless otherwise provided in a Supplemental Indenture, neither Issuer nor the Bond Registrar shall be required (a) to register the transfer or exchange of Bonds for the period next preceding any Interest Payment Date for the Bonds, beginning with the Regular Record Date for such Interest Payment Date and ending on such Interest Payment Date, or for the period next preceding any date for the proposed payment of Defaulted Interest with respect to such Bonds beginning with the Special Record Date for the date of such proposed payment and ending on the date of such proposed payment, (b) to register the transfer or exchange of Bonds for a period beginning 15 days before the mailing of any notice of redemption of such Bonds and ending on the day of such mailing, or (c) to register the transfer or exchange of any Bonds called for redemption. Every Person that transfers Bonds shall timely provide or cause to be timely provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. If any Bond becomes mutilated or is lost, stolen or destroyed, Issuer may execute and the Trustee shall authenticate and deliver a new Bond of like Series, date of issue, maturity date, principal amount and interest rate per annum as the Bond so mutilated, lost, stolen or destroyed, provided that (a) in the case of such mutilated Bond, such Bond is first surrendered to the Trustee, (b) in the case of any such lost, stolen or destroyed Bond, there is first furnished evidence of such loss, theft or destruction in form satisfactory to the Trustee together with indemnity satisfactory to the Trustee, (c) all other reasonable requirements of Issuer and the Trustee are complied with, and (d) expenses incurred in connection with such transaction are paid by the Holder. Any Bond surrendered for registration or transfer shall be cancelled. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual
obligations on the part of Issuer, whether or not the Bonds so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued under this Indenture, in any moneys or securities held by Issuer or any Fiduciary for the benefit of the Bondholders.

Section 3.07. Temporary Bonds. (a) Until the definitive Bonds are prepared, Issuer may execute, in the same manner as is provided in Section 3.03, and upon the request of Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. Issuer at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and the cancellation of such surrendered temporary Bonds, the Trustee shall authenticate and, without service charge to the Holder thereof (except a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto), deliver in exchange therefor, definitive Bonds of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to this Indenture.

(b) All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

Section 3.08. Payment of Interest on Bonds; Interest Rights Reserved. Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Bond is registered at the close of business on the date (hereinafter, the “Regular Record Date”) which is the fifteenth day of the calendar month next preceding such Interest Payment Date; provided, that, for Variable Rate Bonds, the Regular Record Date for the Interest Payment Date occurring [__________, 2021] shall be [__________, 2021].

Any interest on any Bond which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (hereinafter, “Defaulted Interest”) shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by Issuer to the Persons in whose names the Bonds are registered at the close of business on a date (hereinafter, the “Special Record Date”) for the payment of such Defaulted Interest, which shall be fixed in the following manner. Issuer shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time Issuer shall deposit with the Paying Agents an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to and approved in writing by the Paying Agents for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Section provided. Thereupon the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days or less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the written notice of
the proposed payment. The Bond Registrar shall promptly notify Issuer of such Special Record Date and, in the name and at the expense of Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration or transfer of or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 3.09. Book Entry System; Appointment of Securities Depository. All Bonds shall be registered in the name of Cede & Co., as nominee for DTC, as Securities Depository, and held in the custody or for the account of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of Bonds, and the Beneficial Owners will not receive physical delivery of Bond certificates except as provided in this Indenture. For so long as the Securities Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership interests will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership of Bonds is to receive, hold or deliver any Bond certificate. In connection with any proposed transfer outside the Book Entry System, the Issuer or the Securities Depository shall provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Issuer may, with Written Notice to the Trustee but without the consent of any Bondholders, appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book Entry System for the Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

Issuer and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book Entry System with respect to the Bonds, and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of the Bonds beneficially owned by the Beneficial Owners.

Whenever, during the term of the Bonds, the Beneficial Ownership of any Series thereof is determined by a book entry at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring such Bonds shall be deemed modified to require the appropriate Person to meet the requirements of the Securities Depository as to registering or transferring the book entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Bonds shall, while such Bonds are in such Book Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law. Notwithstanding the foregoing, the Trustee shall have no obligation or duty to monitor, determine or inquire as to
compliance with any restrictions on transfer imposed under this Indenture or under applicable law
with respect to any transfer of any interest in any security (including any transfers between or
among Securities Depository Participants or Beneficial Owners) other than to require delivery of
such certificates and other documentation or evidence as are expressly required by, and to do so if
and when expressly required by the terms of, this Indenture, and to examine the same to determine
substantial compliance as to form with the express requirements hereof.

Except as otherwise specifically provided herein with respect to the rights of Participants
and Beneficial Owners, when a Book Entry System is in effect, Issuer and the Trustee may treat
the Securities Depository (or its nominee) as the sole and exclusive owner of the Bonds registered
in its name for the purposes of payment of the principal, Redemption Price or Purchase Price of
and interest on such Bonds or portion thereof to be redeemed or purchased, of giving any notice
permitted or required to be given to the Bondholders under this Indenture and of voting, and neither
Issuer nor the Trustee shall be affected by any notice to the contrary. Neither Issuer nor the Trustee
will have any responsibility or obligations to the Securities Depository, any Participant, any
Beneficial Owner or any other Person which is not shown on the bond register, with respect to
(a) the accuracy of any records maintained by the Securities Depository or any Participant; (b) the
payment by the Securities Depository or by any Participant of any amount due to any Beneficial
Owner in respect of the principal amount, Redemption Price or Purchase Price of, or interest on,
any Bonds; (c) the delivery of any notice by the Securities Depository or any Participant; (d) the
selection of the Beneficial Owners to receive payment in the event of any partial redemption of
any of the Bonds; or (e) any other action taken by the Securities Depository or any Participant.
The Trustee shall pay all principal or Redemption Price of and interest on the Bonds registered in
the name of Cede only to or “upon the order of” the Securities Depository (as that term is used in
the Uniform Commercial Code as adopted in the State and New York), and all such payments shall
be valid and effective to fully satisfy and discharge Issuer’s obligations with respect to the
principal, Redemption Price or purchase price of and interest on such Bonds to the extent of the
sum or sums so paid.

The Book Entry System may be discontinued by the Trustee and Issuer, at the Written
Direction and expense of Issuer, and Issuer and the Trustee will cause the delivery of Bond
certificates to such Beneficial Owners of the Bonds and registered in the names of such Beneficial
Owners as shall be specified to the Trustee by the Securities Depository in writing, under the
following circumstances:

(i) The Securities Depository determines to discontinue providing its service
with respect to any Bonds and no successor Securities Depository is appointed as described
above. Such a determination may be made at any time by giving 30 days’ written notice
to Issuer and the Trustee and discharging its responsibilities with respect thereto under
applicable law; or

(ii) Issuer determines, with written notice to the Trustee, not to continue the
Book Entry System through a Securities Depository for the Bonds.

When the Book Entry System is not in effect, all references herein to the Securities
Depository shall be of no further force or effect.
In connection with any proposed transfer outside the Book Entry System of the Securities Depository, the Securities Depository and Issuer shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

[Section 3.10. Subsidy Payments. In the event that one or more Series of Bonds are issued which qualify the Issuer to receive Subsidy Payments and the Issuer, in a Supplemental Indenture, pledges such Subsidy Payments to the repayment of the principal of, and interest on, the Bonds, then, to the extent such Subsidy Payments are received by the Trustee, they shall constitute Revenues under the Indenture.]

Section 3.11. Limitation of Liability of the Issuer. Notwithstanding anything to the contrary herein or in the Bonds, all obligations of the Issuer to make payments of any kind pursuant to this Indenture are special, limited obligations of the Issuer, payable solely from, and secured solely by, the Trust Estate as and to the extent provided herein. The Issuer shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Neither the faith and credit of the Issuer nor the taxing power of the State or any political subdivision thereof is pledged to payments pursuant to this Indenture or the Bonds. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Indenture or the Energy Project, except solely to the extent Revenues are received for the payment thereof.

ARTICLE IV

REDEMPTION OF BONDS AND TENDER PROVISIONS

Section 4.01. Extraordinary Redemption. (a) The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the Month following the Early Termination Payment Date, which redemption date in the case of a Failed Remarketing will be the same day as the current Mandatory Purchase Date, at the following Redemption Prices:

(i) in the case of a Series of Bonds bearing interest at the Term Rate, the Amortized Value thereof, and

(ii) in the case of a Series of Variable Rate Bonds, 100% of the principal amount thereof,

plus, in each case, accrued and unpaid interest to the redemption date.
(b) Issuer shall (i) provide the Trustee with Written Notice of the Early Termination Payment Date as provided in Section 7.12(b), and (ii) as of the first day of the Month prior to a Mandatory Purchase Date, direct the Trustee to send a conditional notice of redemption pursuant to Section 4.04 in the event that a Failed Remarketing may occur.

Section 4.02. Sinking Fund Redemption. The Series 2021A Bonds maturing on [__________, 20__] shall be subject to mandatory redemption prior to their stated maturity in part (by lot) from Sinking Fund Installments, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption on the following dates and in the following amounts:

<table>
<thead>
<tr>
<th>REDEMPTION DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>REDEMPTION DATE</th>
<th>PRINCIPAL AMOUNT</th>
</tr>
</thead>
</table>

* Stated Maturity

Section 4.03. Optional Redemption. (a) The Series 2021A Bonds are subject to redemption at the option of Issuer in whole or in part (in such amounts and by such maturities as may be specified by Issuer and by lot within a maturity) on any date prior to [__________, 20__] at a Redemption Price, calculated by a quotation agent selected by Issuer, equal to the greater of:

1. the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2021A Bond to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of the stated maturity date of such Series 2021A Bond or the Initial Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for such Series 2021A Bonds minus 0.25% per annum, and

2. the Amortized Value thereof;

in each case plus accrued and unpaid interest to the date of redemption.

(b) The Series 2021A Bonds maturing on or after the Initial Mandatory Purchase Date are subject to redemption at the option of Issuer in whole or in part (in such amounts and by such maturities as may be specified by Issuer and by lot within a maturity) on any date on or after [__________, 20__] at a Redemption Price equal to the Amortized Value thereof as of the first
day of the month of redemption (expressed as a percentage of the principal amount of the Series 2021A Bonds to be redeemed), as follows:

<table>
<thead>
<tr>
<th>REDEMPTION PERIOD (BOTH DATES INCLUSIVE)</th>
<th>MATURITY</th>
<th>MATURITY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[________ 1, 20__]</td>
<td>[________ 1, 20__]</td>
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</tbody>
</table>

in each case plus accrued and unpaid interest to the date of redemption.

(c) Issuer shall provide Written Notice of the identity of the quotation agent to the Trustee.

(d) The Series 2021A Bonds shall also be subject to redemption at the option of Issuer, as provided in a Supplemental Indenture executed or Interest Rate Determination Certificate delivered in connection with a Conversion of the Bonds.

(e) For so long as a Series of Bonds is bearing interest in an Index Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer, in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity), on any Business Day on or after the first Business Day of the third month preceding the Index Rate Tender Date for such Series of Bonds at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(f) For so long as a Series of Bonds is bearing interest in a Daily Interest Rate Period or a Weekly Interest Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity) on any Business Day at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(g) For so long as a Series of Bonds is bearing interest in an Commercial Paper Interest Rate Period, each Bond of such Series is subject to optional redemption by the Issuer on the day succeeding the last day of any CP Interest Term for such Bond at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(h) Notwithstanding anything to the contrary contained herein, in connection with the Conversion of a Series of Bonds from one Interest Rate Period to another or the establishment of a new Term Rate Period or Index Rate Period for a Series of Bonds, the Issuer may, in the Written Direction to the Trustee delivered in connection with such Conversion or establishment of a new Term Rate Period or Index Rate Period, designate additional or different terms upon which the Bonds of such Series will be subject to optional redemption during the new Interest Rate Period.
for such Series of Bonds if such additional or different terms of optional redemption are approved by Bond Counsel.

(i) In lieu of redeeming Series 2021A Bonds pursuant to this Section 4.03, the Trustee may, upon the Written Direction of Issuer, use such funds as may be available by Issuer or as are otherwise available hereunder to purchase such Series 2021A Bonds at a Purchase Price equal to the applicable Redemption Price of such Series 2021A Bonds. Any Series 2021A Bonds so purchased may be remarkedeted in a new Interest Rate Period or may be cancelled by the Trustee, in either case as set forth in the Written Direction of Issuer.

Section 4.04. Redemption Notice. (a) When the Trustee receives Written Notice from Issuer in the form of Exhibit D hereto of its election or direction to redeem Bonds pursuant to Section 4.06, the Trustee shall give notice, in the name of Issuer, substantially in the form provided in such Exhibit D, or when redemption of Bonds is authorized or required other than at the election or direction of Issuer pursuant to Section 4.07, the Trustee shall give notice, in the name of Issuer, substantially in the form attached hereto as Exhibit E, with respect to any extraordinary redemption pursuant to Section 4.01(a), of the redemption of such Bonds by first class mail, postage prepaid, to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee in writing for that purpose, as of the Regular Record Date, as follows:

(i) for any redemption of the Bonds pursuant to Section 4.01, not less than 15 days prior to the redemption date;

(ii) for redemptions of Bonds pursuant to Section 4.02 or Section 4.03(a), not less than 30 days prior to the redemption date for Bonds bearing interest in a Term Rate Period, and not less than 15 days prior to the redemption date for Bonds bearing interest in any other Interest Rate Period;

(iii) for redemptions of Bonds pursuant to Section 4.03(b) or Section 4.02(d), not less than 15 days prior to the redemption date.

A notice of redemption of the Series 2021A Bonds (A) pursuant to clause (iii) above may include a statement that, if the Series 2021A Bonds are not redeemed for any reason, the Series 2021A Bonds shall be subject to mandatory tender for purchase on the Initial Mandatory Purchase Date, and (B) pursuant to clause (i) or clause (iii) above may be combined with notice of the mandatory tender of the Series 2021A Bonds on the Initial Mandatory Purchase Date pursuant to Section 4.16, subject to the condition set forth in Section 4.16(b).

(b) In the event that the Bonds may be subject to extraordinary redemption as a result of a Failed Remarketing that could occur if the Trustee has not received the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds pursuant to this Section 4.04 may be a conditional notice of redemption, delivered in each case not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee’s failure to receive, by noon New York City time on the fifth Business Day preceding such
Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date and the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed.

(c) Each notice of redemption shall identify the Bonds to be redeemed and shall state (i) the redemption date, (ii) the Redemption Price or the manner in which it will be calculated, (iii) that the Bonds called for redemption must be surrendered to collect the Redemption Price, (iv) the address at which the Bonds must be surrendered, and (v) that interest on the Bonds called for redemption ceases to accrue on the redemption date.

(d) With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the meaning of Section 12.01 of this Indenture, such notice shall state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of money sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such money shall not have been so received said notice shall be of no force and effect, and Issuer shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

(e) Failure of the registered owner of any Bonds which are to be redeemed to receive any such notice, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any other Bonds as to which proper notice was given as provided herein.

Section 4.05. Bonds Redeemed in Part. Upon surrender of a Bond redeemed in part, Issuer will execute and the Trustee will authenticate and deliver to the Holder thereof a new Bond or Bonds in Authorized Denominations equal in principal amount to the unredeemed portion of the Bond surrendered. Notwithstanding anything herein to the contrary, so long as the Bonds are held in the Book Entry System the Bonds will not be delivered as set forth above; rather transfers of Beneficial Ownership of such Bonds to the Person indicated above will be effected on the registration books of the Securities Depository pursuant to its rules and procedures.

Section 4.06. Redemption at the Election or Direction of Issuer. In the case of any redemption of Bonds at the election or direction of Issuer, Issuer shall give Written Notice to the Trustee, at least five Business Days prior to the last date on which the Trustee is required to give notice of redemption pursuant to Section 4.04, of its election or direction so to redeem, the Series, Maturity Dates, principal amounts by Maturity Dates and CUSIP numbers of the Bonds to be redeemed, the Redemption Price or the manner in which it will be calculated for each Maturity Date of Bonds to be redeemed, and the date on which such Bonds are to be redeemed, and directing
the Trustee to provide notice of such redemption to the Owners of such Bonds pursuant to Section 4.04 (maturities and principal amounts thereof to be redeemed shall be determined by Issuer in its sole discretion). In the event notice of redemption shall have been given as in Section 4.04 provided, there shall be paid on or prior to the redemption date to the appropriate Paying Agents an amount in cash which, in addition to other moneys, if any, available therefor held by such Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, all of the Bonds to be redeemed. Issuer shall promptly notify the Trustee in writing of all such payments by it to such Paying Agents.

Section 4.07. Redemption Other Than at Issuer’s Election or Direction. Whenever by the terms of this Indenture the Trustee is required or authorized to redeem Bonds other than at the election or direction of Issuer, the Trustee shall (i) select the Bonds or portions of Bonds to be redeemed, (ii) give the notice of redemption and (iii) pay out of moneys available therefor the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article IV and, to the extent applicable, Section 5.07 and Section 5.08.

Section 4.08. Selection of Bonds To Be Redeemed. If less than all of the Bonds of like Series and maturity shall be called for redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds not previously called for redemption; provided, however, that the portion of any Bond of a denomination of more than a minimum Authorized Denomination to be redeemed shall be in the principal amount of such minimum Authorized Denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of a minimum Authorized Denomination which is obtained by dividing by such minimum Authorized Denomination the principal amount of such Bond to be redeemed in part.

Section 4.09. Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 4.04, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price, plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption less than all of a Bond, Issuer shall execute and the Trustee shall authenticate and the Paying Agent shall deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bonds so surrendered, Bonds of like maturity in any of the Authorized Denominations. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like maturity to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption. Upon the payment of the Redemption Price of and any
accrued interest on the Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Section 4.10. Cancellation and Destruction of Bonds. All Bonds paid or redeemed either at or before maturity shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10(c) that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee pursuant to the Written Direction of Issuer, shall thereupon be promptly cancelled (or deemed to have been cancelled). Bonds so cancelled may, to the extent permitted by law, at any time be destroyed by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the Bonds so destroyed, and one executed certificate shall be filed with Issuer and the other executed certificate shall be retained by the Trustee.

Section 4.11. Optional Tender During Daily or Weekly Interest Rate Periods. (a) During any Daily Interest Rate Period or Weekly Interest Rate Period for a Series of Bonds, any Eligible Bond of such Series shall be purchased from its Owner at the option of the Owner on any Business Day at the applicable Purchase Price, payable in immediately available funds, upon delivery to the Trustee at its designated corporate trust office for delivery of notices and the Remarketing Agent of an irrevocable written notice which states the name of the Owner, the principal amount and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery of such notice to the Trustee. Any notice delivered to the Trustee after 4:00 p.m., New York City time, shall be deemed to have been received on the next succeeding Business Day. Payment of such Purchase Price shall be made from the sources and in the order of priority set forth in Section 4.15(e) on the date specified in such notice, provided such Bond is delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

(b) So long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, only direct or indirect Participants may give notice of the election to tender Bonds or portions thereof and the Beneficial Owners shall not have the right to tender Bonds directly to the Trustee, except through such Participants.

Section 4.12. Mandatory Tender for Purchase on Day Next Succeeding the Last Day of Each CP Interest Term. On the day next succeeding the last day of each CP Interest Term for an Eligible Bond in a Commercial Paper Interest Rate Period, unless such day is the first day of a new Interest Rate Period for such Bond (in which event such Bond shall be subject to mandatory purchase pursuant to Section 4.14), such Bond shall be purchased from its Owner at the applicable Purchase Price payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; provided, however, that in any event such Bond will not bear interest at the CP Interest Term Rate after the last day of the
applicable CP Interest Term. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority set forth in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

Section 4.13. Mandatory Tender for Purchase on the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date. On the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date for a Series of Bonds (which, for the avoidance of doubt, can occur only on a Mandatory Purchase Date), unless such day is the first day of a new Interest Rate Period for such Bonds (in which event such Bonds shall be subject to mandatory purchase pursuant to Section 4.14), each Eligible Bond of such Series shall be purchased from the Owner thereof at the applicable Purchase Price, payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; provided, however, that in any event such Bond will not bear interest at the applicable Index Rate or Term Rate after the last day of the applicable Index Rate Period or Term Rate Period, respectively. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange. The Series 2021A Bonds shall be subject to mandatory tender pursuant to this Section 4.13 on the Initial Mandatory Purchase Date.

Section 4.14. Mandatory Tender for Purchase on Conversion of Interest Rate Period. Eligible Bonds of a Series shall be subject to mandatory tender for purchase on each Conversion Date (which shall be a Mandatory Purchase Date) at the applicable Purchase Price, payable in immediately available funds. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to such Trustee, executed in blank by the Owner thereof or by the Owner’s duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in this paragraph or in the notice provided pursuant to Section 2.10.

Section 4.15. General Provisions Relating to Tenders.

(a) Creation of Bond Purchase Fund.

(i) There shall be created and established hereunder with the Trustee a fund to be designated the “Bond Purchase Fund” to be held in trust only for the benefit of the Owners of tendered Bonds who shall thereafter be restricted exclusively to the moneys held in such fund for the satisfaction of any claim for the
Purchase Price of such tendered Bonds. The Bond Purchase Fund and the Accounts therein are not Pledged Funds.

(ii) There shall be created and designated the following Accounts with respect to each Series of Bonds within the Bond Purchase Fund: the “Remarketing Proceeds Account” and the “Issuer Purchase Account.” Moneys paid to the Trustee for the purchase of tendered or deemed tendered Bonds of a Series received from (A) the Remarketing Agent shall be deposited in the Remarketing Proceeds Account for such Series in accordance with the provisions of Section 4.15(d)(i) and (B) Issuer shall be deposited in Issuer Purchase Account in accordance with the provisions of Section 4.15(d)(ii). Moneys provided by Issuer not required to be used in connection with the purchase of tendered Bonds shall be returned to Issuer in accordance with Section 4.15(d) and Section 4.15(e).

(iii) Moneys in Issuer Purchase Account and the Remarketing Proceeds Account with respect to a Series of Bonds shall not be commingled with other funds held by the Trustee and shall remain uninvested. Issuer shall have no right, title or interest in any of the funds held on deposit in the Remarketing Proceeds Account or any remarketing proceeds held for any period of time by the Remarketing Agent.

(b) Deposit of Bonds. The Trustee agrees to hold all Bonds delivered to it pursuant to Section 4.11, Section 4.12, Section 4.13 or Section 4.14 in trust for the benefit of the respective Owners which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds have been delivered to such Owner in accordance with the provisions of this Indenture and until such Bonds shall have been delivered by the Trustee in accordance with Section 4.15(f).

(c) Remarketing of Bonds.

(i) Immediately upon its receipt, but not later than noon, New York City time on the following Business Day, from an Owner of a Bond bearing interest at a Daily Interest Rate or a Weekly Interest Rate of a notice pursuant to Section 4.11, the Trustee shall notify the Remarketing Agent by telephone, promptly confirmed in writing by Electronic Means, of such receipt, specifying the principal amount of Bonds for which it has received such notice, the names of the Owners thereof and the date on which such Bonds are to be purchased in accordance with Section 4.11.

(ii) As soon as practicable, but in no event later than 10:15 a.m., New York City time, on a Purchase Date, the Remarketing Agent shall inform the Trustee by telephone, promptly confirmed in writing, by Electronic Means, of the principal amount of Purchased Bonds to be purchased on such date, the name, address and taxpayer identification number of each such purchaser, and the Authorized Denominations in which such Purchased Bonds are to be delivered. Upon receipt from the Remarketing Agent of such information, and in no event later than 12:30 p.m., New York City time, on the Purchase Date, the Trustee shall
prepare Purchased Bonds in accordance with such information received from the Remarketing Agent for the registration of transfer and redelivery to the Remarketing Agent pursuant to paragraph (f) of this Section 4.15.

(iii) Any Purchased Bonds which are subject to mandatory tender for purchase in accordance with Section 4.12, Section 4.13 or Section 4.14 which are not presented to the Trustee on the Purchase Date and any Purchased Bonds which are the subject of a notice pursuant to Section 4.16 which are not presented to the Trustee on the Purchase Date, shall, in accordance with the provisions of Section 4.16, be deemed to have been purchased upon the deposit of moneys equal to the Purchase Price thereof into any or all of the accounts of the Bond Purchase Fund.

(d) Deposits of Funds.

(i) The Trustee shall deposit into the Remarketing Proceeds Account for the applicable Series of Bonds any amounts received by it in immediately available funds by 12:30 p.m., New York City time, on any Purchase Date from the Remarketing Agent against receipt of Bonds by the Remarketing Agent pursuant to Section 4.15(f) and on account of Purchased Bonds remarketed pursuant to the terms of the Remarketing Agreement.

(ii) Issuer may, in its sole discretion, pay to the Trustee in immediately available funds the amount equal to the difference, if any, between the total Purchase Price of Bonds to be purchased and the amount of money deposited under Section 4.15(d)(i) (the “Additional Liquidity Drawing Amount”) by 12:45 p.m., New York City time. The Trustee shall deposit any Additional Liquidity Drawing Amounts into Issuer Purchase Account for the applicable Series of Bonds.

(iii) The Trustee shall hold all proceeds received from the Remarketing Agent or Issuer pursuant to this Section 4.15(d) in trust for the tendering Owners. In holding such proceeds and moneys, the Trustee will be acting on behalf of such Owners by facilitating the purchase of the Bonds and not on behalf of Issuer and will not be subject to the control of Issuer. Subject to the provisions of Section 4.15(e), following the discharge of the pledge created by Section 5.01 or after payment in full of the Bonds, the Trustee shall pay any moneys remaining in any Account of the Bond Purchase Fund directly to the Persons for whom such money is held upon presentation of evidence reasonably satisfactory to the Trustee that such Person is rightfully entitled to such money and the Trustee shall not pay such amounts to any other Person.

(e) Disbursements; Payment of Purchase Price. Moneys delivered to the Trustee on a Purchase Date shall be applied at or before 1:00 p.m., New York City time, on such Purchase Date to pay the Purchase Price of Purchased Bonds of the applicable Series in immediately available funds as follows in the indicated order of application and, to the extent not so applied on such date, shall be held in the separate and segregated
Accounts of the Bond Purchase Fund for the benefit of the Owners of the Purchased Bonds which were to have been purchased:

FIRST: Moneys deposited in the Remarketing Proceeds Account for the Bonds of the applicable Series; and

SECOND: Moneys deposited in Issuer Purchase Account for the Bonds of the applicable Series.

Any moneys held by the Trustee in Issuer Purchase Account remaining unclaimed by the Owners of the Purchased Bonds which were to have been purchased for two years after the respective Purchase Date for such Bonds shall be paid to Issuer, upon a request in a Written Direction of Issuer against written receipt therefor. The Owners of Purchased Bonds who have not yet claimed money in respect of such Bonds shall thereafter be entitled to look only to the Trustee, to the extent it shall hold moneys on deposit in the Bond Purchase Fund, or Issuer to the extent moneys have been transferred in accordance with this Section 4.15(e). The Trustee shall have no obligation to advance its own funds to fund the Bond Purchase Fund or otherwise pay the Purchase Price on any Bonds.

(f) Delivery of Purchased Bonds.

(i) The Remarketing Agent shall give telephonic notice, promptly confirmed by a written notice, by Electronic Means, to the Trustee on each date on which Bonds shall have been purchased pursuant to Section 4.11, Section 4.12, Section 4.13, or Section 4.14, specifying the principal amount of such Bonds, if any, sold by it and a list of such purchasers showing the names and Authorized Denominations in which such Bonds shall be registered, and the addresses and social security or taxpayer identification numbers of such purchasers. By 12:30 p.m., New York City time, on the Purchase Date, a principal amount of Bonds equal to the amount of Purchased Bonds purchased with moneys from the Remarketing Proceeds Account shall be made available by the Trustee to the Remarketing Agent against payment therefor in immediately available funds.

(ii) A principal amount of Bonds equal to the amount of Purchased Bonds purchased from moneys on deposit in Issuer Purchase Account shall be delivered on the day of such purchase by the Trustee to or as directed by Issuer. The Trustee shall register such Bonds in the name of Issuer or as otherwise directed by Issuer.

Section 4.16. Notice of Mandatory Tender for Purchase. In connection with any mandatory tender for purchase of Bonds in accordance with Section 4.12, Section 4.13 or Section 4.14, the Trustee shall give the notice (which in the case of a mandatory tender pursuant to Section 4.14 shall be given as a part of the notice given pursuant to Section 2.06(c), Section 2.07(c), Section 2.08(c), Section 2.09(c) or Section 2.14(c)) stating: (a) that the Purchase Price of any Bond so subject to mandatory tender for purchase shall be payable only upon surrender of such Bond to the Trustee at the office specified in such notice, accompanied by an instrument
of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange; (b) that all Bonds so subject to mandatory tender for purchase shall be purchased on the Mandatory Purchase Date, unless (i) a Failed Remarketing shall have occurred prior to such Mandatory Purchase Date, in which case such Bonds shall be redeemed rather than purchased on such Mandatory Purchase Date, or (ii) such Bonds shall have otherwise been redeemed on or prior to, or are not Outstanding as of, such Mandatory Purchase Date; and (c) that in the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on such Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and that no interest shall accrue thereon on and after such Mandatory Purchase Date and that the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof. Any such notice of a mandatory tender of Bonds pursuant to Section 4.12, Section 4.13 or Section 4.14 shall be given no less than 30 days prior to the applicable Mandatory Purchase Date, and the Trustee shall simultaneously give a conditional notice of extraordinary redemption pursuant to Section 4.04 to provide for the extraordinary redemption of the Bonds if a Failed Remarketing occurs prior to the Mandatory Purchase Date. No later than five (5) Business Days prior to the date on which such conditional notice of extraordinary redemption is required to be given by the Trustee pursuant to Section 4.4, Issuer shall direct the Trustee to send such conditional redemption notice pursuant to a Written Direction in the form attached hereto as Exhibit E, which Written Direction shall include the applicable Redemption Date and method(s) for calculating the Redemption Price, to be followed by notice of the Redemption Price, as provided in Exhibit E.

Section 4.17. Irrevocable Notice Deemed to Be Tender of Bond; Undelivered Bonds Deemed Purchased on Mandatory Purchase Date. (a) The giving of notice by an Owner of a Bond bearing interest at a Daily Interest Rate or a Weekly Interest Rate pursuant to Section 4.11 shall constitute the irrevocable tender for purchase of each such Bond with respect to which such notice shall have been given, regardless of whether such Bond is delivered to the Trustee for purchase on the relevant Purchase Date as provided in this Article IV.

(b) The Trustee may refuse to accept delivery of any Purchased Bonds for which a proper instrument of transfer, with a satisfactory guaranty of signature, has not been provided; such refusal, however, shall not affect the validity of the purchase of such Bond as herein described. For purposes of this Article IV, the Trustee for the Bonds shall determine timely and proper delivery of Purchased Bonds and the proper endorsement of such Bonds. Such determination shall be binding on the Owners of such Bonds, Issuer and the Remarketing Agent, absent manifest error. If any Owner of a Bond who shall have given notice of tender of purchase pursuant to Section 4.11 or any Owner of a Bond subject to mandatory tender for purchase pursuant to Section 4.12, Section 4.13 or Section 4.14 shall fail to deliver such Bond to the Trustee at the place and on the applicable date and at the time specified, or shall fail to deliver such Bond properly endorsed, such Bond shall constitute an Undelivered Bond. If funds in the amount of the Purchase Price of the Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, from and after the date and time of that required delivery, (i) the Undelivered Bond shall be deemed to be purchased and shall no longer be deemed to be Outstanding under this Indenture; (ii) interest shall no longer accrue thereon; and (iii) funds in the amount of the Purchase Price of
the Undelivered Bond shall be held by the Trustee for such Bond for the benefit of the Owner thereof, to be paid on delivery (and proper endorsement) of the Undelivered Bond to the Trustee at its designated corporate trust office. Any funds held by the Trustee as described in clause (iii) of the preceding sentence shall be held uninvested.

Section 4.18. Remarking of Bonds; Notice of Interest Rates. (a) Upon a mandatory tender or notice of the tender for purchase of Bonds, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds subject to conditions in the Remarketing Agreement, any such sale to be made on the Purchase Date in accordance with this Article IV at a price equal to the principal amount thereof plus accrued interest, if any, thereon to the Purchase Date. The Remarketing Agent agrees that it shall not sell any Bonds purchased pursuant to this Article IV to Issuer or a Project Participant, or to any Person who controls, is controlled by, or is under common control with Issuer or a Project Participant.

(b) The Remarketing Agent shall determine the rate of interest to be borne by the Bonds bearing interest at a Daily Interest Rate, Weekly Interest Rate, CP Interest Term Rates or a Term Rate and the CP Interest Terms for each Bond during each Commercial Paper Interest Rate Period, and the applicable Calculation Agent shall determine the rate of interest to be borne by each Series of Bonds bearing interest at an Index Rate, all as provided in Article II, and shall furnish to the Trustee and to Issuer upon request, in a timely fashion by Electronic Means, each rate of interest and CP Interest Term so determined.

(c) Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and is continuing an Event of Default, there shall be no remarketing of Bonds tendered or deemed tendered for purchase.

Section 4.19. The Remarketing Agent. (a) The Remarketing Agent shall be authorized by law to perform all the duties imposed upon it pursuant to the Remarketing Agreement. The Remarketing Agent or any successor shall signify its acceptance of the duties and obligations imposed upon it pursuant to the Remarketing Agreement by an agreement under which the Remarketing Agent will agree to:

(i) determine the interest rates applicable to the Bonds of the applicable Series and give written notice to the Trustee of such rates and periods in accordance with Article II;

(ii) keep such books and records as shall be consistent with prudent industry practice; and

(iii) use its best efforts to remarket Bonds in accordance with the Remarketing Agreement.

(b) The Remarketing Agent shall hold all amounts received by it in accordance with any remarketing of Bonds in trust only for the benefit of the Owners of tendered Bonds and shall not commingle such amounts with any other moneys.
Section 4.20. Qualifications of Remarketing Agent; Resignation; Removal. (a) Each Remarketing Agent shall be a member of the National Association of Securities Dealers, having a combined capital stock, surplus and undivided profits of at least $50,000,000 and be authorized by law to perform all the duties imposed upon it by this Indenture. Any successor Remarketing Agent shall have senior unsecured long term debt which shall be rated by each Rating Agency.

(b) A Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Remarketing Agreement by giving written notice to the Trustee and Issuer. No such resignation or removal shall be effective until a successor has been appointed and has accepted such duties. A Remarketing Agent may be removed at the direction of Issuer at any time on 30 days’ prior written notice, in a Written Direction of Issuer, filed with such Remarketing Agent for the related Series of Bonds and the Trustee.

Section 4.21. Successor Remarketing Agents. (a) Any corporation, association, partnership or firm which succeeds to the business of the Remarketing Agent as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, shall thereby become vested with all the property, rights and powers of such Remarketing Agent hereunder.

(b) In the event that the Remarketing Agent has given written notice of resignation or has been notified of its impending removal in accordance with Section 4.20(b), Issuer shall appoint a successor Remarketing Agent.

(c) In the event that the property or affairs of the Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and Issuer shall not have appointed its successor, Issuer shall appoint a successor and, if no appointment is made within 30 days, the Trustee shall apply to a court of competent jurisdiction for such appointment.

Section 4.22. Tender Agent. The Trustee shall serve as the tender agent for any Series of Bonds for which optional or mandatory tender for purchase is applicable under this Article IV, and as tender agent it and each successor Trustee appointed in accordance with this Indenture shall:

(a) hold all Bonds delivered to it for purchase hereunder in trust for the exclusive benefit of the respective Owners that shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners;

(b) hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the exclusive benefit of the Person that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to it for the account of such Person and, thereafter, for the benefit of the Owners tendering such Bonds; and

(c) keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection at all times during regular business hours (upon reasonable prior written notice of inspection) by Issuer and the Remarketing Agent for such Series of Bonds.
ARTICLE V

ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

Section 5.01. Pledge Effected by This Indenture. (a) The Bonds and the Interest Rate Swap are limited obligations of the Issuer payable solely from and secured as to the payment of the principal and Redemption Price thereof, and interest thereon, in accordance with their terms and the provisions of this Indenture solely by, the Trust Estate. Pursuant to the Granting Clauses of this Indenture, the Trust Estate has been conveyed, assigned and pledged to the payment of the principal and Redemption Price of and interest on the Bonds and the Interest Rate Swap Payments in accordance with their terms, and any other senior, parity and subordinate obligations of the Issuer secured by the lien of this Indenture, subject to (i) the pledge of and lien on the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparty and the Project Participants, and (ii) the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture. The Trust Estate thereby pledged and assigned shall immediately be subject to the lien of such pledge without any further physical delivery thereof or other further act, and the lien of such pledge shall be a first lien and shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice thereof.

(b) None of the Bonds, the Interest Rate Swap or the Commodity Swap constitute a debt or liability of the State or of any political subdivision thereof, other than as limited obligations of the Issuer, and the Issuer shall not be obligated to pay the principal or Redemption Price of, or interest on, the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments except from the funds provided therefor under this Indenture. Neither the faith and credit nor the taxing power of the State or of any political subdivision thereof, including the Issuer, or of any Project Participant is pledged to the payment of the principal or Redemption Price of and interest on the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments. The issuance of the Bonds and the execution and delivery of the Interest Rate Swap and the Commodity Swap shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment. The Issuer has no taxing power.

(c) Nothing contained in this Indenture shall be construed to prevent Issuer from acquiring, constructing or financing, through the issuance of its bonds, notes or other evidences of indebtedness, any facilities or supplies of Energy other than Energy Project; provided that such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate or any portion thereof, and neither the cost of such facilities or supplies of Energy nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate or any portion thereof.

Section 5.02. Establishment of Funds and Accounts. (a) The following Funds and Accounts are hereby established, each of which shall be held by the Trustee except as indicated below:

Draft Trust Indenture
(i) Project Fund,

(ii) Revenue Fund,

(iii) Operating Fund,

(iv) Debt Service Fund, consisting of the Debt Service Account (and within such Account, a Capitalized Interest Subaccount) and the Redemption Account,

(v) Commodity Swap Payment Fund,

(vi) General Reserve Fund[, consisting of a Working Capital Account],

(vii) Energy Remarketing Reserve Fund, consisting of a Remediation Account,

(viii) Assignment Payment Fund,

(ix) Bond Purchase Fund established pursuant to Section 4.15, consisting of the Issuer Purchase Account and the Remarketing Proceeds Account, and

(x) Administrative Fee Fund, to be held by Issuer.

(b) Within the Funds and Accounts established hereunder and held by the Trustee, the Trustee may create additional Accounts in any Fund or subaccounts in any Accounts as may facilitate the administration of this Indenture. Issuer may, by Supplemental Indenture, with the prior written approval of the Trustee, establish one or more additional accounts or subaccounts. By Supplemental Indenture, Issuer may also (i) establish custodial accounts to be held by the Trustee as custodian to receive Revenues paid by the Project Participants under the Energy Supply Contracts, and (ii) provide for the application of such amounts for transfer to the Revenue Fund and for such other purposes as may be specified therein.

Section 5.03. Project Fund. (a) There shall be paid into the Project Fund proceeds of the Bonds in the amount specified by Written Request of Issuer, and there may be paid into the Project Fund, at the option of Issuer, any moneys received for or in connection with Energy Project by Issuer from any other source, unless required to be otherwise applied as provided by this Indenture. Upon delivery of the Bonds, the Trustee shall immediately transfer from the Project Fund into the Capitalized Interest Subaccount of the Debt Service Account an amount, specified by Written Request of Issuer, representing capitalized interest on the Bonds to the date set forth in such Written Request. Except as otherwise provided in this Section 5.03, amounts in Project Fund shall be applied by Issuer to pay the Cost of Acquisition and any capitalized interest on the Series 2021A Bonds.

(b) Before any payment is made by the Trustee from the Project Fund, Issuer shall file with the Trustee a Written Request of Issuer, showing with respect to each payment to be made, the name of the Person to whom payment is due and the amount to be paid, and stating that the obligation to be paid was incurred and is a proper charge against the Project Fund. To the extent
that the Written Request includes amounts to be paid pursuant to the Energy Purchase Agreement, copies of the invoices or requests for direct payments submitted under the Energy Purchase Agreement shall be attached to the Written Request. Each such Written Request shall be sufficient evidence to the Trustee: (i) that obligations in the stated amounts have been incurred by Issuer and that each item thereof is a proper charge against the Project Fund; and (ii) that there has not been filed with or served upon Issuer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the Persons named in such Written Request which has not been released or will not be released simultaneously with the payment of such obligation other than materialmen’s or mechanics’ liens accruing by mere operation of law.

(c) Upon receipt of each such Written Request, the Trustee shall pay the amounts set forth therein as directed by the terms thereof.

(d) Notwithstanding any of the other provisions of this Section, to the extent that other moneys are not available therefor, amounts in Project Fund shall be applied to the payment of principal of and interest on Bonds when due.

(e) Upon Written Direction of Issuer, but not earlier than six months after the date of delivery of the Bonds, the Trustee shall transfer to the Revenue Fund any amounts remaining on deposit in Project Fund.

Section 5.04. Revenues and Revenue Fund; Other Amounts. (a) All Revenues shall be deposited promptly by the Trustee upon receipt thereof into the Revenue Fund; provided that, for the avoidance of doubt, if any amounts are received from a Project Participant for which Outstanding Sold Receivables exist, the Trustee shall promptly cause any such receipts to be paid to the Energy Supplier to the extent of such Outstanding Sold Receivables without setoff of any kind in accordance with Section 2.7 of the Receivables Purchase Provisions and any remaining amounts received from such Project Participant shall be deposited into the Revenue Fund.

(b) In the event that any Specified Project Participant fails to pay the amount due under its Energy Supply Contract, the Trustee shall perform the following actions on behalf of Issuer under Section 2.1 of the Receivables Purchase Provisions: (i) provide a preliminary notice by email to Issuer and the Energy Supplier that a Specified Project Participant will fail to make a payment as soon as practicable after becoming aware that a payment default will occur and in any event no later than the end of the calendar day on which the relevant payment default occurs, and (ii) prepare and deliver to the Energy Supplier a Put Option Notice by 12:00 p.m. New York City time on the Business Day following any such payment default, provided that the amount of Put Receivables to be sold pursuant to such Put Option Notice shall not exceed the Maximum Monthly Amount. On the twenty-fourth day of the Month in which such Put Option Notice was delivered (or if such day is not a Business Day, the next Business Day following the twenty-fourth day of such Month), the Trustee shall deliver to the Energy Supplier the bill of sale and certificates required by Section 2.3(a) of the Receivables Purchase Provisions. The Trustee is hereby authorized to sell the Put Receivables then owed by the Specified Project Participants under their respective Energy Supply Contracts pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. All amounts received by the Trustee
pursuant to the Receivables Purchase Provisions in respect of Put Receivables shall be deposited in the Revenue Fund for application pursuant to Section 5.05.

(c) Upon receipt of the preliminary notice from the Trustee pursuant to (b)(i) above, Issuer shall:

(i) in consultation with the Energy Supplier, determine the amount of the Net Participant Shortfall Amount, if any, resulting from such failure to pay; and

(ii) give prompt written notice of the amounts of such Net Participant Shortfall Amount, if any, and the amount of such nonpayment and the resulting Net Participant Shortfall Amount, to the Trustee, the Energy Supplier and the Commodity Swap Counterparty.

(d) The following amounts, which are payable to the Trustee but do not constitute Revenues, shall be applied by the Trustee as follows:

(i) any Termination Payment shall be deposited directly into the Redemption Account of the Debt Service Fund as provided in Section 5.08;

(ii) any Assignment Payment shall be deposited directly into the Assignment Payment Fund as provided in Section 5.12;

(iii) amounts received from the Energy Supplier under the Receivables Purchase Provisions in respect of Call Receivables shall be deposited into the Commodity Swap Payment Fund as provided herein;

(iv) amounts representing the Project Administration Fee shall be paid as received to Issuer into the Administrative Fee Fund;

(v) any Interest Rate Swap Receipts shall be deposited directly into the Debt Service Account as provided in Section 2.13; and

(vi) any amounts required by Section 5.11 to be deposited into the Energy Remarketing Reserve Fund shall be deposited directly therein.

Section 5.05. Payments from Revenue Fund. (a) In each Month during which there is a deposit of Revenues into the Revenue Fund (but in no case later than the respective dates set forth below), the Trustee shall apply the amounts on deposit in the Revenue Fund, to the extent available, for credit or deposit to the Funds and Accounts indicated below, in the amounts described below (such application to be made in such a manner so as to assure good funds are available on the respective dates set forth below) in the following order of priority:

(i) To the Administrative Fee Fund, not later than the twenty-fifth day of such Month, the amounts required pursuant to Section 5.14;
(ii) To the Operating Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount, if any, required so that the balance therein shall equal the amount estimated to be necessary for the payment of Operating Expenses coming due for the following Month (but no such payments or expenses for any prior Month);

(iii) Subject to the provisos below, to the Debt Service Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day) for the credit to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in Schedule II hereto, or (B) the amount necessary to cause the cumulative Scheduled Debt Service Deposits to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

(iv) To the Commodity Swap Payment Fund, on or before the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

(v) To the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Call Receivables and the payment of interest on all Call Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

provided, however, that if a Project Participant’s payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred under clause (iii) above to the extent necessary such that the amount available for transfer under clause (iv) above is not less than (A) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (B) the sum of all Net Participant Shortfall Amounts for such Month; and

provided further, the amount required to be transferred to the Debt Service Account pursuant to clause (iii) above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

(b) If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified on Schedule II, the Trustee shall immediately notify Issuer of such deficiency and the Trustee shall (i) if Issuer has not previously done so, cause Issuer to suspend all deliveries of all quantities of Energy under an Energy Supply Contract to any Project Participant that is in default thereunder, and (ii) promptly give notice to the Energy Supplier to follow the Remarketing Provisions.

(c) In each Month during which (i) there is a deposit of Revenues into the Revenue Fund and (ii) payment of a Principal Installment is due, after making such transfers, credits and deposits
as required by paragraph (a) above and after the applicable Principal Installment payment date, the Trustee shall credit to the General Reserve Fund the remaining balance in the Revenue Fund.

(d) So long as there shall be held in the Debt Service Fund an amount sufficient to pay in full all Outstanding Bonds and Interest Rate Swap Payments in accordance with their terms (including principal or applicable Sinking Fund Installments and interest thereon), no transfers shall be required to be made to the Debt Service Fund.

Section 5.06. Operating Fund. (a) Amounts credited to the Operating Fund shall be applied from time to time by the Trustee to the payment of (i) first, Rebate Payments, and (ii) second, any other Operating Expenses then due and payable.

(b) Amounts credited to the Operating Fund that the Trustee, on the last Business Day of each Month, determines to be in excess of the requirements of such Fund for such Month, shall be applied to make up any deficiencies in the Debt Service Account. Any balance of such excess not required to be so applied shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

Section 5.07. Debt Service Fund—Debt Service Account. (a) The amounts deposited into the Debt Service Account pursuant to Section 5.05(a)(iii) shall be held in such Account and applied to the payment of the Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date; provided that, for the purposes of computing the amount to be deposited in such Account, there shall be excluded from the required deposit the amount, if any, on deposit in the Capitalized Interest Subaccount or set aside in the Debt Service Account from the proceeds of Bonds (including amounts, if any, transferred thereto from the Project Fund) for the payment of interest on the Bonds. Amounts in the Capitalized Interest Subaccount shall be applied to Debt Service prior to other monies held within the Debt Service Account.

(b) The Trustee shall pay out of the Debt Service Account to the Paying Agent: (i) on or before each Interest Payment Date, the amount required for the interest on the Bonds payable on such date; (ii) on or before each Bond Payment Date, the Interest Rate Swap Payments then due, (iii) on or before the Bond Payment Date on which a Principal Installment is due, the amount required for the Principal Installment payable on such date; and (iv) on or before any redemption date, the amount required for the payment of the Redemption Price of and accrued interest on such Bonds then to be redeemed; provided, however, that if with respect to any Bonds or portions thereof the amounts due on any such Bond Payment Date and/or redemption date are intended to be paid from a source other than amounts in the Debt Service Account prior to any application of amounts in the Debt Service Account to such payments, then the Trustee (after Written Notice from Issuer to the Trustee that Issuer intends to make payments from a source other than amounts in the Debt Service Account) shall not pay any such amounts to the Paying Agent until such amounts have failed to be provided from such other source at the time required and if any such amounts due are paid from such other source the Trustee shall apply the amounts in the Debt Service Account to provide reimbursement for such payment from such other source as provided in the agreement governing reimbursement of such amounts to such other source. Such amounts shall be applied by the Paying Agent on and after the due dates thereof. The Trustee shall also pay
out of the Debt Service Account the accrued interest included in the purchase price of Bonds purchased for retirement.

(c) Amounts accumulated in the Debt Service Account with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) shall, if so directed by Issuer in a Written Request delivered not less than 30 days before the due date of such Sinking Fund Installment, be applied by the Trustee to (i) the purchase of Bonds of the maturity for which such Sinking Fund Installment was established, (ii) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms, or (iii) any combination of (i) and (ii). All purchases of any Bonds pursuant to this subsection (c) shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made in such manner as Issuer shall direct the Trustee in writing. The applicable sinking fund Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Debt Service Account until such Sinking Fund Installment date, for the purpose of calculating the amount of such Account. As soon as practicable after the thirtieth day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for the redemption on such due date, by giving notice as required by this Indenture, Bonds of maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after making allowance for any Bonds purchased or redeemed pursuant to Section 5.10 which Issuer has directed the Trustee in writing to apply as a credit against such Sinking Fund Installment as provided in Section 5.10(c). The Trustee shall pay out of the Debt Service Account to the Paying Agent, on or before such redemption date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the payment of such Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment). All expenses in connection with the purchase or redemption of Bonds shall be paid by Issuer in such manner as Issuer shall direct the Trustee in writing from the Operating Fund.

All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10 that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee, shall thereupon be promptly cancelled (or deemed to have been cancelled).

(d) Amounts accumulated in the Debt Service Account with respect to any principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established (together with amounts accumulated therein with respect to interest on such Bonds) shall, upon the reasonable prior Written Direction of Issuer, be applied by the Trustee on or prior to the due date thereof, to (i) the purchase of such Bonds or (ii) the redemption at the principal amount of such Bonds, if then redeemable by their terms. All purchases of any Bonds pursuant to this subsection (d) shall be made at prices not exceeding the principal amount of such Bonds plus accrued interest, and such purchases shall be made in such manner as Issuer shall determine. The principal amount of any Bonds so purchased or redeemed shall be deemed to constitute part of the
Debt Service Account until such due date, for the purpose of calculating the amount of such Account.

(e) The amount deposited in the Debt Service Account on the Issue Date of any Series of Bonds shall be set aside and applied to the payment of interest on the Bonds and any Interest Rate Swap Payments.

(f) In the event of the refunding or defeasance of any Bonds, the Trustee shall, if directed by Issuer in writing, withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts with the Trustee to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded or defeased; provided that such withdrawal shall not be made unless immediately thereafter Bonds being refunded or defeased shall be deemed to have been paid pursuant to Section 12.01(b). In the event of such refunding or defeasance, Issuer may direct the Trustee to withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts in any Fund or Account hereunder; provided, however, that such withdrawal shall not be made unless the Bonds being defeased shall be deemed to have been paid pursuant to Section 12.01(b) and provided, further, that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held hereunder.

(g) Any amount remaining in the Debt Service Account after a date for payment of a Principal Installment shall, to the extent not required to be retained therein for purposes of making future payments, be deposited in the Revenue Fund.

Section 5.08. Debt Service Fund–Redemption Account. (a) In the event of an early termination of the Energy Purchase Agreement, Issuer shall direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of Issuer. The Trustee shall deposit the Termination Payment into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the redemption of Outstanding Bonds pursuant to Section 4.01.

(b) Any amounts remaining on deposit in the Redemption Account following the redemption and payment of all Outstanding Bonds shall be applied by the Trustee first to pay any Swap Payment Deficiency, second to repurchase any Put Receivables or Call Receivables owned by the Energy Supplier, and third, upon Written Direction of Issuer to the Trustee, shall be transferred to the Revenue Fund.

(c) For the avoidance of doubt, no Extraordinary Expenses shall be paid from the Redemption Account.

Section 5.09. Commodity Swap Payment Fund. (a) Amounts credited to the Commodity Swap Payment Fund shall be applied from time to time by the Trustee to the payment of the Commodity Swap Payments when due.
(b) In the event that (i) any Specified Project Participant fails to pay the amount due under its Energy Supply Contract, (ii) as of the next Business Day the Trustee determines that after taking into account amounts to be transferred into the Commodity Swap Payment Fund pursuant to Section 5.05(a)(iv), there is or will be a Swap Payment Deficiency, the Trustee shall prepare and deliver to the Energy Supplier a Call Receivables Offer pursuant to Section 2.2(a) of the Receivables Purchase Provisions. If the Energy Supplier elects to purchase Call Receivables pursuant to such Call Receivables Offer, which election shall not be later than the Business Day following receipt by the Energy Supplier of the Call Receivables Offer, the Energy Supplier shall deliver to the Trustee the Call Option Notice setting forth the purchase date, which shall be the twenty-fifth day of the Month in which the Energy Supplier receives the Call Receivables Offer (or if such day is not a Business Day, the next succeeding Business Day). The Trustee is hereby authorized to sell the Call Receivables then owed by the Specified Project Participants pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. If the Energy Supplier elects to purchase such Call Receivables, all amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Call Receivables purchased pursuant to this Section 5.09(b) shall be deposited in the Commodity Swap Payment Fund and applied to payment of Commodity Swap Payments.

(c) Within one Business Day after the Energy Supplier delivers a Call Option Notice or is deemed not to have exercised its right to purchase Call Receivables pursuant to the Receivables Purchase Provisions, the Trustee shall deliver written notice to the Commodity Swap Counterparty indicating whether the Energy Supplier has elected to purchase Call Receivables pursuant to the Call Receivables Offer sufficient to increase the balance in the Commodity Swap Payment Fund to an amount equal to the next succeeding Commodity Swap Payment.

(d) The Trustee shall deliver to the Custodian pursuant to the Custodial Agreements, written notice as follows: (i) on any Business Day on which the Trustee delivers a Call Receivables Offer to the Energy Supplier pursuant to Section 2.2(a) of the Receivables Purchase Provisions, written notice that a Swap Payment Deficiency exists and the amount of such Swap Payment Deficiency; (ii) on any Business Day on which the Energy Supplier is required to make an election to purchase Call Receivables pursuant to Section 2.2(b) of the Receivables Purchase Provisions, written notice as to whether the Energy Supplier has elected to purchase such Call Receivables and, if so, the purchase date of such Call Receivables; and (iii) if the Energy Supplier has elected to purchase Call Receivables, on the purchase date thereof written notice that the purchase price has been received by the Trustee in immediately available funds.

(e) Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

Section 5.10. General Reserve Fund. (a) The Trustee shall apply moneys on deposit in the General Reserve Fund in the following amounts and in the following order of priority: first, for deposit into the Debt Service Account, the amount necessary (or all of the moneys in the General Reserve Fund if less than the amount necessary) to make up any deficiencies in the deposits to such Account required by Section 5.05(a)(iii); second, for deposit into the Commodity Swap
Payment Fund, the amount necessary to cause the balance therein to equal a Commodity Swap Payment that is then due; and third for deposit into the Operating Fund, the amount necessary for the payment of any Operating Expenses then due and payable and for which other funds are not available under this Indenture.

(b) Amounts on deposit in the General Reserve Fund not required to meet a deficiency or to make a deposit as provided in subsection (a) above shall be applied by the Trustee upon the Written Request of Issuer to the following in the order listed below:

(i) payment of Extraordinary Expenses;

(ii) payment of any fees owed pursuant to any Qualified Investments;

(iii) annual refunds to Project Participants pursuant to the Energy Supply Contracts;

(iv) the purchase or redemption of Bonds and expenses in connection with the purchase or redemption of such Bonds or any reserves which Issuer determines shall be required for such purposes; and

(viii) any other lawful purpose of Issuer under the Act;

provided, however, that, subject to the provisions of subsection (a) of this Section, amounts credited to the General Reserve Fund and required by this Indenture to be applied to the purchase or redemption of Bonds shall be applied to such purpose. [There is hereby created a Working Capital Account of the General Reserve Fund that may be used for any of the purposes contemplated in this Section 5.11(b) at the Written Request of Issuer. Issuer may deposit funds that are not part of the Trust Estate into the Working Capital Account of the General Reserve Fund from time to time.]

(c) If at any time Bonds of any maturity for which Sinking Fund Installments shall have been established are (i) purchased or redeemed other than pursuant to Section 5.07(d) or (ii) deemed to have been paid pursuant to Section 12.01(b) and, with respect to such Bonds which have been deemed paid, irrevocable written instructions have been given by Issuer to the Trustee to redeem or purchase the same on or prior to the due date of the Sinking Fund Installment to be credited under this subsection (c), Issuer may from time to time and at any time by Written Direction to the Trustee specify the portion, if any, of such Bonds so purchased, redeemed or deemed to have been paid and not previously applied as a credit against any Sinking Fund Installment which are to be credited against future Sinking Fund Installments. Such direction shall specify the amounts of such Bonds to be applied as a credit against each Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Bonds are to be applied as a credit; provided, however, that none of such Bonds may be applied as a credit against a Sinking Fund Installment to become due less than 45 days after such written notice is delivered to the Trustee. All such Bonds to be applied as a credit shall be surrendered to the Trustee for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment
remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

Section 5.11. Energy Remarketing Reserve Fund. There shall be paid by the Trustee into the Remediation Account of the Energy Remarketing Reserve Fund the amounts, as directed in a Written Direction of Issuer, specified in [Section 5(e)(i)] of the Remarketing Provisions. In the case of a Remediation Remarketing (as defined in the Remarketing Provisions) pursuant to [Section 8] of the Remarketing Provisions, amounts shall be released from the Remediation Account upon such remarketing and applied pursuant to a Written Direction of Issuer as follows: (a) if the proceeds received by the Trustee from the remarketing equal or exceed the Remediation Remarketing Purchase Price, the portion of the Remediation Account allocable to such remarketing shall be transferred to the General Reserve Fund, and (b) if the proceeds received by the Trustee from the remarketing are less than the Remediation Remarketing Purchase Price, then (x) the portion of the Remediation Account of the Energy Remarketing Reserve Fund allocable to such remarketing shall be used to make a payment to the Energy Supplier in an amount equal to the excess of such Remediation Remarketing Purchase Price over such proceeds received by Issuer from the remarketing, and (y) any remaining amounts allocable to such remarketing shall be transferred to the General Reserve Fund. For purposes of this Section 5.11(a), the portion of the Remediation Account of the Energy Remarketing Reserve Fund specified in writing by Issuer to the Trustee as the amount allocable to a remarketing shall consist of the product of (i) a fraction, the numerator of which is the purchase price of the Energy to be remarketed, and the denominator of which is the aggregate amount previously received by Issuer from the sale of such Energy in Non-Private Business Sales (as defined in the Remarketing Provisions) or Private Business Sales (as defined in the Remarketing Provisions) that, as of the time of the remarketing, has not been remediated in accordance with [Section 8] of the Remarketing Provisions, multiplied by (ii) the balance of the Remediation Account of the Energy Remarketing Reserve Fund at the time of the remarketing. [NTD: To be updated to include participant rebate accounts.]

Section 5.12. Assignment Payment Fund. In connection with the issuance of Refunding Bonds, any Assignment Payment received from the Energy Supplier shall be deposited into the Assignment Payment Fund to be transferred to the replacement energy supplier, provided, however, that if the existing Bonds have not been redeemed or defeased on or before the Mandatory Purchase Date, in whole, by the Refunding Bonds, all or a portion of the Assignment Payment shall be transferred to the Trustee for deposit as directed by Issuer in writing to the Redemption Account in Section 5.08, along with the proceeds of the Refunding Bonds, in order to redeem all of the Outstanding Bonds.

Section 5.13. Purchases of Bonds. Except as otherwise provided in Section 5.07, any purchase of Bonds (or portions thereof) by or at the direction of Issuer pursuant to this Indenture may be made with or without tenders of Bonds and at either public or private sale, in such manner as Issuer may determine.

Section 5.14. Administrative Fee Fund. Deposits shall be made to the Administrative Fee Fund each Month for administrative fees of Issuer, as directed in a Written Direction of Issuer.
from amounts received pursuant to the Energy Supply Contracts or from the remarketing or other sale of Energy. Issuer administrative fees shall not exceed for any Month and any Energy Supply Contract the quantity of Energy required to be delivered under the Power Supply Contracts during such Month multiplied by $\{\text{[blank]}\}$ per MWh (each as determined by Issuer and confirmed in such Written Direction to the Trustee). Payments of such deposits into the Administrative Fee Fund shall be identified as such to the Trustee by Issuer (or Issuer shall cause the related Project Participants to do so) by Written Direction or Electronic Means no later than the Business Day preceding the day on which such payment is to be made. [NTD: Form of compensation to CCCFA to be confirmed.]

**ARTICLE VI**

**DEPOSITORIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS**

*Section 6.01. Depositories.* (a) All moneys held by the Trustee under the provisions of this Indenture shall constitute trust funds and the Trustee may deposit such moneys with one or more Depositaries in trust for the parties secured hereunder. All moneys deposited under the provisions of this Indenture with the Trustee or any Depository shall be held in trust and applied only in accordance with the provisions of this Indenture; provided, however, that the Trustee shall be entitled to rely, without verification, on any certificate of a bank, trust company, national banking association or other entity that certifies that it meets the requirements for being a Depository of moneys hereunder and shall not be responsible for any monitoring of such requirements after the initial deposit of any moneys pursuant to the provisions of this Indenture.

(b) Each Depository shall be a bank or trust company organized under the laws of any state of the United States or a national banking association having capital stock, surplus and undivided earnings of $50,000,000 or more, and willing and able to accept the office on reasonable and customary terms and authorized by law to act in accordance with the provisions of this Indenture; provided, however, that the Trustee shall be entitled to rely, without verification, on any certificate of a bank, trust company, national banking association or other entity that certifies that it meets the requirements for being a Depository of moneys hereunder and shall not be responsible for any monitoring of such requirements after the initial deposit of any moneys pursuant to the provisions of this Indenture.

*Section 6.02. Deposits.* (a) All Revenues and moneys held by any Depository under this Indenture may be placed on demand or time deposit, if and as directed by Issuer, provided that such deposits shall permit the moneys so held to be available for use at the time when needed. Any such deposit may be made in the commercial banking department of any Fiduciary, which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. All moneys held by any Fiduciary, as such, may be deposited by such Fiduciary in its banking department on demand or, if and to the extent directed by Issuer and acceptable to such Fiduciary, on time deposit, provided that such moneys on deposit be available for use at the time when needed. Such Fiduciary shall allow and credit on such moneys such interest, if any, as it
customarily allows upon similar funds of similar size and under similar conditions or as required by law.

(b) All moneys held under this Indenture by the Trustee, Issuer or any Depository shall be held in such manner as may then be required by applicable federal or State laws and regulations and applicable state laws and regulations of the state in which such Depository is located, regarding security for, or granting a preference in the case of, the deposit of public or trust funds or, in the absence of such laws and regulations, shall be either (i) continuously or fully insured by the Federal Deposit Insurance Corporation, or (ii) continuously and fully secured, to the extent not insured by the Federal Deposit Insurance Corporation, by lodging with the Trustee, as custodian, as collateral security, Qualified Investments having a market value (exclusive of accrued interest) not less than the amount of such moneys (or portion thereof not insured by the Federal Deposit Insurance Corporation); provided, however, that, to the extent permitted by law, it shall not be necessary for the Fiduciaries to give security under this subsection (b) for the deposit of any moneys with them held in trust and set aside by them for the payment of the principal or Redemption Price of or interest on any Bonds, or for the Trustee, Issuer or any Depository to give security for any moneys which shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

(c) All moneys deposited with the Trustee and each Depository shall be credited to the particular Fund or Account to which such moneys belong and, except as provided with respect to the investment of moneys in Qualified Investments in Section 6.03, the moneys credited to each particular Fund or Account shall be kept separate and apart from, and not commingled with, any moneys credited to any other Fund or Account or any other moneys deposited with the Trustee, Issuer and each Depository, except as provided in Section 6.03.

Section 6.03. Investment of Certain Funds. Moneys held in the Debt Service Account shall be invested and reinvested by the Trustee at the Written Direction of Issuer to the fullest extent practicable in Qualified Investments specified in such Written Direction which mature or are payable not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Accounts and may take the form of a Debt Service Fund Agreement. To the extent moneys held in the Debt Service Account are invested in a Debt Service Fund Agreement, Issuer covenants and agrees that it will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with such Debt Service Fund Agreement without the written consent of the Trustee and the delivery to the Trustee of a Rating Confirmation with respect to such amendment. Moneys held in the Revenue Fund and the Project Fund may be invested and reinvested by the Trustee at the Written Direction of Issuer in Qualified Investments specified in such Written Direction which mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Funds. Moneys held in the Operating Fund (other than moneys in the Operating Fund held with respect to Rebate Payments) may be invested at the Written Direction of Issuer in Qualified Investments specified in such Written Direction which mature within twelve months or which provide funds as needed; moneys held in the Operating Fund with respect to Rebate Payments shall be invested at the Written Direction of Issuer in Qualified Investments specified in such Written Direction at fair market value; and moneys in the General Reserve Fund and the Energy Remarketing Reserve Fund may be invested at the Written Direction of Issuer in
Qualified Investments specified in such Written Direction; in any case the Qualified Investments in such Funds or in the Accounts therein shall mature not later than such times as shall be necessary to provide moneys when needed to provide payments from such Funds or Accounts. The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of Issuer and may rely on such investment directions without verifying the suitability or legality of such investment and any deposit or investment directed by Issuer shall constitute a certification by Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of Issuer. The Trustee shall be entitled to rely in good faith on any Written Direction of Issuer as to the suitability and legality of the directed investment and any deposit or investment directed by Issuer shall constitute a certification by Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

Interest earned on any moneys or investments in the Funds and Accounts established hereunder shall be paid into the Revenue Fund, other than interest earned on any moneys or investments in (i) the Redemption Account in the Debt Service Fund, (ii) the Operating Fund relating to Rebate Payments, (iii) the Administrative Fee Fund and (iv) the Energy Remarketing Reserve Fund. Such interest shall be held in such respective Fund or Account for the purposes thereof. If no written investment directions have been delivered to the Trustee for any Fund or Account, moneys shall be held there uninvested by the Trustee.

Nothing in this Indenture shall prevent any Qualified Investments acquired as investments of or security for Funds held under this Indenture from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

Nothing in this Indenture shall preclude the Trustee from investing or reinvesting moneys that it holds in the Funds and Accounts established pursuant to this Indenture through its bond department; provided, however, that Issuer may, in its discretion, give a Written Direction to the Trustee that such moneys be invested or reinvested in a manner other than through such bond department.

To the extent any Qualified Investment is insured, guaranteed or otherwise supported by any secondary facility, the Trustee shall make a claim under such facility at such time as shall be required to receive payment thereunder not later than the date required to make any necessary deposit pursuant to Section 5.05 or Section 5.09 or otherwise under Article V.
Section 6.04. Valuation and Sale of Investments. Obligations purchased as an investment of moneys in any Fund created under the provisions of this Indenture shall be deemed at all times to be a part of such Fund and any profit realized from the liquidation of such investment shall be credited to such Fund, and any loss resulting from the liquidation of such investment shall be charged to the respective Fund.

In computing the amount in any Fund created under the provisions of this Indenture for any purpose provided in this Indenture, obligations purchased as an investment of moneys therein shall be valued at the lower of market value or the amortized cost thereof. The accrued interest paid in connection with the purchase of any obligation shall be included in the value thereof until interest on such obligation is paid. Such computation shall be determined at the Written Direction of Issuer to the Trustee as of each Principal Installment payment date and at such other times as Issuer shall reasonably determine. Guaranteed investment contracts or similar agreements shall be valued at their face value to the extent that they provide for withdrawals without market adjustment or penalty when they are required to provide payment pursuant to this Indenture.

Except as otherwise provided in this Indenture, the Trustee shall use reasonable efforts to sell at the best price obtainable, or present for redemption, any obligation so purchased as an investment whenever it shall be requested to do so by a Written Request of Issuer. Whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund held by the Trustee or Issuer, Issuer or the Trustee at the Written Direction of Issuer shall use reasonable efforts to sell at the best price obtainable or present for redemption such obligation or obligations designated by an Authorized Officer in a Written Direction of Issuer to the Trustee as necessary to provide sufficient moneys for such payment or transfer. The Trustee shall not be required to provide any brokerage information.

The Trustee shall not be liable or responsible for any loss, fee, tax or other charge resulting from any such investment, sale or presentation for redemption made in the manner provided above in Section 6.02, Section 6.03 or Section 6.04.

ARTICLE VII

PARTICULAR COVENANTS OF ISSUER

Issuer covenants and agrees with the Trustee and the Bondholders as follows:

Section 7.01. Payment of Bonds. Issuer shall duly and punctually pay or cause to be paid, but solely from the Trust Estate, the principal or Redemption Price, if any, of every Bond and the interest thereon, at the dates and places and in the manner provided in the Bonds, according to the true intent and meaning thereof.

Section 7.02. Extension of Payment of Bonds. Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement, and in case the maturity of any of the Bonds or the time for payment of any such
claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under this Indenture, to the benefit of this Indenture or to any payment out of Revenues or Funds established by this Indenture, including the investment income, if any, thereof, pledged under this Indenture or the moneys (except moneys held in trust for the payment of particular Bonds or claims for interest pursuant to this Indenture) held by the Fiduciaries, except subject to the prior payment of the principal of all Bonds Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

Section 7.03. Offices for Servicing Bonds. Pursuant to Section 2.02, Issuer has appointed the Trustee as Bond Registrar and Paying Agent for the Bonds and the Trustee hereby accepts such appointments. The Trustee shall at all times maintain one or more agencies or offices where Bonds may be presented for registration exchange or transfer, where principal and Redemption Price of and interest on the Bonds may be paid, where reports, statements and other documents furnished to the Trustee hereunder may be inspected and where notices, demands and other documents may be served upon Issuer in respect of the Bonds or of this Indenture, and the Trustee shall continuously maintain or make arrangements to provide such services. Issuer shall maintain one or more offices or agencies where notices, demands and other documents may be served upon Issuer in respect of the Bonds or this Indenture, and Issuer shall continuously maintain or make arrangements to provide such services.

Section 7.04. Further Assurance. At any and all times Issuer shall, as far as it may be authorized by law, comply with any reasonable request of the Trustee to pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular the rights, Revenues and other moneys, securities and funds hereby pledged, or intended so to be, or which Issuer may become bound to pledge.

Section 7.05. Power To Issue Bonds and Pledge the Trust Estate. Issuer is duly authorized under all applicable laws to create and issue the Bonds and to execute and deliver this Indenture and to pledge the Trust Estate, in the manner and to the extent provided in this Indenture. Except to the extent otherwise provided in or contemplated by this Indenture, the Trust Estate will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the security interest, the pledge and assignment created by this Indenture, and all action on the part of Issuer to that end has been and will be duly and validly taken. The Bonds and the provisions of this Indenture are and will be the valid and legally enforceable limited obligations of Issuer in accordance with their terms and the terms of this Indenture. Issuer shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Revenues and other moneys, securities and funds pledged under this Indenture and all the rights of the Bondholders under this Indenture against all claims and demands of all Persons whomsoever.

Section 7.06. Power To Fix and Collect Fees and Charges for the Sale of Energy. Issuer has, and, to the extent permitted by law, will have as long as any Bonds are Outstanding, good right and lawful power to fix, establish, maintain and collect fees and charges for the sale and
transmission of Energy or otherwise with respect to Energy Project, subject to the terms of the Energy Supply Contracts.

Section 7.07. Creation of Liens. [Except as expressly permitted under the terms of this Indenture, for so long as any Bonds are Outstanding, the Issuer shall not, without a Rating Confirmation, issue any bonds, notes, debentures or other evidences of indebtedness of similar nature payable from or secured by a pledge and assignment of the Trust Estate, other than the Bonds and notes, debentures or other evidences of indebtedness issued to refund Outstanding Bonds, or otherwise incur obligations other than those contemplated by this Indenture, the Energy Purchase Agreement, the Power Supply Contract, the Issuer Custodial Agreements, the Commodity Swap, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments), payable out of or secured by a pledge or assignment of, or lien on, the Trust Estate; and, except as expressly permitted under the terms of this Indenture, shall not, without a Rating Confirmation, create or cause to be created any lien or charge on the Trust Estate except as provided in or contemplated by this Indenture, the Energy Purchase Agreement, the Power Supply Contract, the Issuer Custodial Agreements, the Commodity Swap, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments); provided, however, that nothing contained in this Indenture shall prevent the Issuer from entering into or issuing, if and to the extent permitted by law (A) evidences of indebtedness (1) payable out of moneys in the Project Fund as part of the Cost of Acquisition or (2) payable out of or secured by a pledge and assignment of the Trust Estate or any part thereof to be derived on and after such date as the pledge of the Trust Estate provided in this Indenture shall be discharged and satisfied as provided in Section 12.01, or (B) Commodity Swap and Interest Rate Swaps upon the terms and conditions set forth herein.

Section 7.08. Annual Budget. [Prior to the beginning of each Fiscal Year, Issuer shall prepare and file with the Trustee an Annual Budget for such Fiscal Year which shall set forth in reasonable detail the estimated Revenues and Operating Expenses and other expenditures for Energy Project, the amounts estimated to be deposited into and expended from each Fund and Account established under this Indenture and such additional material as Issuer may determine. Issuer also may at any time adopt an amended Annual Budget for the remainder of the then current Fiscal Year. The Trustee shall only be a repository for the receipt of the Annual Budget and/or any amended Annual Budget and shall have no responsibility or liability with respect to verifying the accuracy of any Annual Budget or amended Annual Budget.] [NTD: To Be Discussed]

Section 7.09. Limitations on Operating Expenses and Other Costs. Issuer shall not incur Operating Expenses in any Fiscal Year in excess of the reasonable and necessary amount of such Operating Expenses.

Section 7.10. Amendments to Energy Supply Contracts. Issuer will not consent or agree to or permit any termination or rescission of, assignment or novation (in whole or in part) by a Project Participant of, or amendment to or otherwise take any action under or in connection with any Energy Supply Contract that will impair the ability of Issuer to collect Revenues in each Fiscal Year which, together with the other amounts available therefor, shall provide an amount sufficient to pay:
(a) The amount estimated by Issuer to be required to be paid during such Fiscal Year into the Operating Fund;

(b) The amounts, if any, required to be paid during such Fiscal Year into the Debt Service Fund;

(c) The amounts, if any, to be paid during such Fiscal Year into any other Fund established under Section 5.02; and

(d) All other charges or liens whatsoever payable out of Revenues during such Fiscal Year;

provided that:

(i) Issuer may take any other action under or in connection with the Energy Supply Contracts that is expressly permitted pursuant to the provisions thereof;

(ii) Issuer and a Project Participant may amend an Energy Supply Contract to change any Delivery Point (as defined and provided therein);

(iii) an Energy Supply Contract may be amended upon receipt of (A) a Rating Confirmation with respect to such amendment, and (B) to the extent such amendment would have a material adverse effect (including, but not limited to, a change in the timing of payments, the source of such payments, or Issuer’s rights of collection thereof) upon the Receivables Purchase Provisions or the Commodity Swap, the consent of the Energy Supplier or the Commodity Swap Counterparty, respectively, such consent not to be unreasonably withheld or delayed;

(iv) Issuer may agree to an assignment or novation of all or a portion of a Project Participant’s rights and obligations under an Energy Supply Contract upon (A) compliance with the restrictions on assignment set forth in such Energy Supply Contract, and (B) receipt of a Rating Confirmation with respect to such assignment or novation; and

(v) An Energy Supply Contract may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement.

Section 7.11. Energy Supply Contracts; Energy Remarketing. (a) Issuer shall cause all Revenues payable by the Project Participants under the Energy Supply Contracts to be payable directly to the Trustee for deposit into the Revenue Fund or custodial accounts established pursuant to Section 5.02(b). Issuer shall enforce the provisions of the Energy Supply Contracts, as well as any other contract or contracts entered into relating to Energy Project, and duly perform its covenants and agreements thereunder.
(b) In the event that any Project Participant fails to pay when due any amounts owed to Issuer under an Energy Supply Contract, Issuer shall:

(i) promptly exercise its right to suspend all Energy deliveries to such Project Participant; and

(ii) promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Energy Purchase Agreement for each Month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

(c) In the event that any Project Participant delivers a Remarketing Election Notice (as defined in each Energy Supply Contract) in respect of any Reset Period, then Issuer will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Provisions for each month of such Reset Period with respect to any quantities of Energy that would otherwise have been delivered to such Project Participant.

(d) For the avoidance of doubt, as of the date of this Indenture, the Energy Supply Contracts with the Project Participants set forth on Schedule I shall be the only Energy Supply Contracts until such time, if any, that an assignment or novation occurs in accordance with the requirements set forth above. Without prejudice to the rights of the Energy Supplier to remarket Energy under the Energy Purchase Agreement or to an assignment or novation of an Energy Supply Contract in compliance with this Section 7.11, Issuer may sell the quantities of Energy to be delivered under the Energy Purchase Agreement only pursuant to the Energy Supply Contracts. A copy of each Energy Supply Contract and any amendment to an Energy Supply Contract, certified by an Authorized Officer, shall be filed with the Trustee.


(b) The Trustee shall promptly notify Issuer of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Energy Purchase Agreement. Issuer shall provide the Trustee with Written Notice of the Early Termination Payment Date (i) on the date on which a Failed Remarketing occurs, and (ii) in all other cases, not more than five (5) Business Days after such date is determined.

(c) Issuer will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with the Energy Purchase Agreement or the Energy Supplier Guaranty which will in any manner materially impair or materially adversely affect the rights of Issuer thereunder or the rights or security of the Bondholders under this Indenture; provided that the Energy Purchase Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation with respect to such assignment or amendment. The Energy Purchase Agreement may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement.
Copies of the Energy Purchase Agreement, the Energy Supplier Guaranty and any amendments thereto, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.13. [Reserved].

Section 7.14. Commodity Swap. Issuer shall cause all Commodity Swap Receipts and any other amounts payable to Issuer pursuant to the Commodity Swap to be collected and paid directly to the Trustee for deposit into the Revenue Fund. Issuer shall enforce the provisions of the Commodity Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify Issuer of any payment default that has occurred and is continuing on the part of the Commodity Swap Counterparty under the Commodity Swap. Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Commodity Swap that will impair the ability of Issuer to comply during the current or any future year with the provisions hereof. Issuer shall only exercise its right to terminate the Commodity Swap in compliance with Section 2.12(b). A copy of the Commodity Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Commodity Swap, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.15. Interest Rate Swap. Issuer shall cause all Interest Rate Swap Receipts or other amounts payable to Issuer pursuant to the Interest Rate Swap to be collected and paid to the Trustee for deposit into the Debt Service Account. Issuer shall enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify Issuer of any payment default that has occurred and is continuing on the part of the Interest Rate Swap Counterparty under the Interest Rate Swap. Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of Issuer to comply during the current or any future year with the provisions hereof. Issuer shall only exercise its right to terminate the Interest Rate Swap in compliance with Section 2.13(b). A copy of the Interest Rate Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Interest Rate Swap, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.16. Accounts and Reports. (a) Issuer shall keep or cause to be kept with respect to Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of this Indenture, in which complete and correct entries shall be made of its transactions relating to Energy Project, the amount of Revenues and the application thereof and each Fund and Account established under this Indenture and relating to its costs and charges under the Energy Supply Contracts and any other contracts for the sale or purchase of Energy, and which, together with the Energy Purchase Agreement and all contracts and all other books and papers of Issuer relating to Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of the Trustee and the Holders of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.
(b) The Trustee shall advise Issuer promptly after the end of each month of the respective transactions during such month relating to each Fund and Account held by it under this Indenture.

(c) Issuer shall file with the Trustee (i) forthwith upon becoming aware of any Event of Default or default in the performance by Issuer of any covenant, agreement or condition contained in this Indenture, a Written Certificate of Issuer and specifying such Event of Default or default and (ii) within 180 days after the end of each Fiscal Year, commencing with the first Fiscal Year ending following the issuance of the Bonds, a Written Certificate of Issuer signed by an appropriate Authorized Officer stating whether, to the best of such Authorized Officer’s knowledge and belief, Issuer has kept, observed, performed and fulfilled its covenants and obligations contained in this Indenture and that there does not exist at the date of such certificate any default by Issuer under this Indenture or any Event of Default or other event which, with the lapse of time specified in Section 8.01, would become an Event of Default, or, if any such default or Event of Default or other event shall so exist, specifying the same and the nature and status thereof.

(d) The reports, statements and other documents required to be furnished to the Trustee pursuant to any provisions of this Indenture shall be available for the inspection of Bondholders at all times during regular business hours at the designated corporate trust office of the Trustee (upon reasonable prior written notice of inspection delivered to the Trustee) and shall be mailed to each Bondholder who shall file a written request therefor with Issuer. Issuer may charge each Bondholder requesting such reports, statements and other documents a reasonable fee to cover reproduction, handling and postage.

Section 7.17. Payment of Taxes and Charges. Issuer will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of Issuer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of Issuer when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under this Indenture), and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which Issuer shall in good faith contest by proper legal proceedings if Issuer shall in all such cases have set aside on its books reserves deemed adequate by Issuer with respect thereto.

Section 7.18. Tax Covenants. (a) Issuer covenants that it shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any of the Bonds under Section 103 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder or, as applicable, would adversely affect the Subsidy Payments or receipt thereof by the Issuer or the Trustee. Without limiting the generality of the foregoing, Issuer covenants that it will (i) comply with the instructions and requirements of the Tax Agreement [and (ii) exercise commercially reasonable efforts to cause the Bonds to be redeemed (A) in such amount as may be necessary to maintain the exclusion from federal gross income of interest on the Bonds and (B) in whole in the event that interest on the Bonds becomes includible in federal gross income. Issuer further agrees to follow any directions provided by
Special Tax Counsel with respect to any such redemption.] This covenant shall survive payment in full or defeasance of the Bonds.

(b) In the event that at any time Issuer is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under this Indenture, Issuer shall so instruct the Trustee in writing as to the specific actions to be taken, and the Trustee shall take such action as specified in such instructions.

(c) Notwithstanding any other provisions of this Section, if Issuer shall provide to the Trustee an Opinion of Special Tax Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or the qualification of the Issuer to receive Subsidy Payments with respect to the applicable Series of Bonds, Issuer and the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Agreement, and the covenants hereunder shall be deemed to be modified to that extent.

(d) Notwithstanding any other provision of this Indenture to the contrary, upon Issuer’s failure to observe or refusal to comply with the above covenants, the Holders of the Bonds, or the Trustee acting on their behalf pursuant to their written request and direction, shall be entitled to the rights and remedies provided to Bondholders under this Indenture based upon Issuer’s failure to observe, or refusal to comply with, the above covenants. In connection with any action taken by it under this Section, the Trustee shall have the benefit of all of the protective provisions set forth in Article IX.

Section 7.19. General. (a) Issuer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of Issuer under the provisions of the Act and this Indenture.

(b) Issuer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to (other than the sale in the normal course of business of Energy to the Project Participants pursuant to the Energy Supply Contracts), or reorganize, reincorporate or reconstitute into or as, another entity unless, (i) prior to such event, Issuer receives confirmation from the Commodity Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Commodity Swap and confirmation from the Interest Rate Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Interest Rate Swap; and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of Issuer under the Commodity Swap and the Interest Rate Swap. [NTD: Conform to swaps.]

(c) Issuer shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the ratings on the Bonds.

(d) Upon the date of authentication and delivery of any of the Bonds, all conditions, acts and things required by law and this Indenture to exist, to have happened and to have been
performed precedent to and in the issuance of such Bonds shall exist, have happened and have been performed, and the issuance of such Bonds, together with all other obligations of Issuer, shall comply in all respects with the applicable laws of the State.

Section 7.20. Bankruptcy. To the extent permitted by law, Issuer shall not, prior to the date which is one year and one day after the termination of this Indenture, acquiesce, petition, or otherwise invoke the process of any court or government authority for the purpose of commencing or sustaining a case under any federal or state bankruptcy, insolvency, or similar law or appointing a receiver, liquidator, assignee, trustee, custodian or sequestrator for any substantial part of its property, or ordering the winding up or liquidation of the affairs of Issuer. This covenant shall survive the termination of this Indenture.

Section 7.21. [Reserved].

Section 7.22. Replacement of Energy Supplier Guaranty. Issuer covenants that it shall not replace Morgan Stanley, as issuer of the Energy Supplier Guaranty, or replace any successor issuer thereof, in each case without obtaining a Rating Confirmation. For the avoidance of doubt, this Section 7.22 is in addition to, and does not override, any other provision of this Indenture or any other document relating to the replacement of the issuer of the Energy Supplier Guaranty.

Section 7.23. Avoidance of Failed Remarketing. Issuer covenants that it will exercise commercially reasonable efforts to avoid a Failed Remarketing.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following shall constitute an “Event of Default” hereunder:

(a) default shall be made in the due and punctual payment of the principal or Redemption Price or Purchase Price of any Bond when and as the same shall become due and payable, whether at maturity or by call for redemption or tender, or otherwise;

(b) default shall be made in the due and punctual payment of any installment of interest on any Bond or the unsatisfied balance of any Sinking Fund Installment therefor (except when such Sinking Fund Installment is due on the maturity date of such Bond), when and as such interest installment or Sinking Fund Installment shall become due and payable;

(c) default shall be made by Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and such default shall continue for a period of 60 days or, if such default cannot reasonably be remedied within such 60-day period, such longer period so long as diligent efforts are being made to remedy such default, after written notice thereof specifying such
default and requiring that it shall have been remedied and stating that such notice is a “Notice of Default” hereunder is given to Issuer by the Trustee or to Issuer and to the Trustee by the Holders of not less than 10% in principal amount of the Bonds Outstanding.

(d) default shall be made in the due and punctual payment of any Commodity Swap Payment or Interest Rate Swap Payment when and as the same shall become due and payable;

(e) Issuer shall commence a voluntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (provided, however, that such event shall not constitute an Event of Default hereunder unless in addition, (i) Issuer is unable to meet its debts with respect to Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or Energy Project, or shall authorize, apply for or consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefrom, or shall make any general assignment for the benefit of creditors, or shall make a written declaration or admission to the effect that it is unable to meet its debts with respect to Energy Project as such debts mature, or shall authorize or take any action in furtherance of any of the foregoing;

(f) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of Issuer in an involuntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (provided, however, that such event shall not constitute an Event of Default hereunder unless in addition, (i) Issuer is unable to meet its debts with respect to Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or Energy Project, or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefor, or a decree or order for the dissolution, liquidation or winding up of Issuer and its affairs or a decree or order finding or determining that Issuer is unable to meet its debts with respect to Energy Project as such debts mature, and any such decree or order shall remain unstayed and in effect for a period of [90] consecutive days; and

(g) there shall occur any other Event of Default specified in a Supplemental Indenture.

Section 8.02. Accounting and Examination of Records After Default. (a) Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of Issuer and all other records relating to Energy Project shall at all times during regular business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.

(b) Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, Issuer, upon demand of the Trustee, will account, as if it were the trustee of an
Section 8.03. Enforcement of Agreements; Application of Moneys after Default. (a) Issuer covenants that, if an Event of Default shall happen and shall not have been remedied, it shall upon the demand of the Trustee (i) take such additional actions on its part as shall be necessary to cause all Project Participants to make payments of all amounts due under the Energy Supply Contracts to the Trustee, (ii) take such additional actions on its part as shall be necessary to cause the Commodity Swap Counterparty to make payment of all amounts due under the Commodity Swap directly to the Trustee, (iii) take such additional actions on its part as shall be necessary to cause the Interest Rate Swap Counterparty to make payment of all amounts due under the Interest Rate Swap directly to the Trustee, (iv) execute and deliver such additional instruments that may be necessary to establish or confirm its pledge and assignment to the Trustee of its rights and remedies afforded Issuer under the Energy Supply Contracts, and (v) pay over or cause to be paid over to the Trustee any Revenues which have not been paid directly to the Trustee as promptly as practicable after receipt thereof. In addition, Issuer hereby irrevocably appoints the Trustee as its agent to issue notices (including notices to direct the remarketing of Energy) and to take any other actions that Issuer is required or permitted to take under the Energy Purchase Agreement, the Energy Supply Contracts, the Commodity Swap and the Interest Rate Swap. For the avoidance of doubt, the Energy Purchase Agreement, the Energy Supply Contracts and the Commodity Swap may be amended at any time for changes in Delivery Points as provided therein, without the consent of the Bondholders, any parties other than those to the relevant agreement, and without the provisions of opinions or other process hereunder. In exercising this agency power, and subject to the rights of the Energy Supplier with respect to the Energy Supply Contracts as set forth in the Receivables Purchase Provisions, the Trustee shall have the authority to take any such actions as it deems necessary under the Energy Purchase Agreement, the Energy Supply Contracts, the Energy Supplier Guaranty and the Commodity Swap. Notwithstanding this grant of agency power, Issuer shall retain, in the absence of any conflicting action by the Trustee, the right to exercise any rights for which it has appointed the Trustee as its agent in accordance with the foregoing; provided, however, if an Event of Default has occurred, the Trustee shall have the right to notify Issuer to cease exercising such rights and, upon receipt of such notice with a copy provided to the Energy Supplier under the Energy Purchase Agreement, the Project Participants under the Energy Supply Contracts, and the Commodity Swap Counterparty under the Commodity Swap, subject to the rights of the Energy Supplier with respect to the Energy Supply Contracts as set forth in the Receivables Purchase Provisions, the Trustee shall have exclusive authority to exercise such rights until such time as the Trustee issues a subsequent notice otherwise.

(b) During the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Revenues received by the Trustee pursuant to any right given or action taken under the provisions of this Article in accordance with Article V of this Indenture, after the payment of the reasonable fees, charges, expenses and liabilities of the Fiduciaries (including court costs and the fees and expenses of the Fiduciaries’ counsel) payable to or incurred by the Fiduciaries in connection with the performance of their duties and the exercise of their rights hereunder, provided that (1) moneys held in the Debt Service Account shall not be used for purposes other than payment of the interest and principal or Redemption Price then due on the Bonds and the payment of Interest Rate Swap Payments then due under the Interest Rate Swap,
(2) moneys in the Commodity Swap Payment Fund shall be used first to pay any Commodity Swap Payments then due, and (3) moneys held in the General Reserve Fund shall not be used other than for the payment of the items specified in Section 5.10(a).

(c) If and whenever all overdue installments of interest on all Bonds, together with the reasonable charges, expenses and liabilities of the Fiduciaries, and all other sums payable or secured by Issuer under this Indenture, including the principal and Redemption Price of and accrued unpaid interest on all Bonds which shall then be payable by declaration or otherwise, shall either be paid by or for the account of Issuer, or provisions satisfactory to the Trustee shall be made for such payment, and all defaults under this Indenture or the Bonds shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over to Issuer all moneys, securities and funds then remaining unexpended in the hands of the Trustee (except moneys, securities and funds deposited or pledged, or required by the terms of this Indenture, particularly Section 5.02, to be deposited or pledged, with the Trustee), and thereupon Issuer and the Trustee shall be restored, respectively, to their former positions and rights under this Indenture. No such payment over to Issuer by the Trustee nor restoration of Issuer and the Trustee to their former positions and rights shall extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

Section 8.04. Appointment of Receiver. The Trustee shall have the right, upon the happening of an Event of Default, to apply in an appropriate proceeding for the appointment of a receiver of Energy Project.

Section 8.05. Proceedings Brought by Trustee. (a) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, by its agents and attorneys, may proceed, and upon written request of the Holders of not less than a majority in principal amount of the Bonds Outstanding and upon being indemnified to its satisfaction shall proceed, to protect and enforce its rights and the rights of the Holders of the Bonds under this Indenture forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against Issuer as if Issuer were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Indenture.

(b) All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at the trial or other proceedings, and any such suit or proceedings instituted by the Trustee shall be brought in its name.

(c) The Holders of not less than a majority in principal amount of the Bonds at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Bondholders not parties to such direction.
(d) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled to exercise any and all rights and powers conferred in this Indenture and provided to be exercised by the Trustee upon the occurrence of any Event of Default.

(e) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the Holders of a majority in principal amount of the Bonds then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders.

**Section 8.06. Restriction on Bondholder’s Action.** (a) No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Indenture or the execution of any trust under this Indenture or for any remedy under this Indenture, unless such Holder (i) shall have previously given to the Trustee written notice of the happening of an Event of Default, as provided in this Article, and the Holders of at least a majority in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, (ii) shall have offered it reasonable opportunity, either to exercise the powers granted in this Indenture or by the laws of the State or to institute such action, suit or proceeding in its own name, and (iii) shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and for the equal benefit of all Holders of the Outstanding Bonds, subject only to the provisions of Section 7.02.

(b) Nothing in this Indenture or in the Bonds shall affect or impair the obligation of Issuer, which is absolute and unconditional, to pay only from the Trust Estate, in accordance with the terms of this Indenture, at the respective dates of maturity and places therein expressed the principal of (and premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of its Bond.

**Section 8.07. Remedies Not Exclusive.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity or by statute on or after the date of execution and delivery of this Indenture.
Section 8.08.  Effect of Waiver and Other Circumstances.  (a) No delay or omission of the Trustee or any Bondholder to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or be an acquiescence therein; and every power and remedy given by this Article VIII to the Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

(b) Prior to the declaration of maturity of the Bonds as provided in Section 8.01, the Holders of not less than a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Holders of all of the Bonds waive any past default under this Indenture and its consequences, except a default in the payment of interest on or principal of or premium (if any) on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 8.09.  Notice of Default. The Trustee shall promptly mail written notice of the occurrence of any Event of Default to each registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of Issuer.

ARTICLE IX

CONCERNING THE FIDUCIARIES

Section 9.01.  Acceptance by Trustee of Duties. The Trustee accepts the duties and obligations imposed upon it by this Indenture and the trusts hereby created, but only, however, upon the terms and conditions set forth in this Indenture.

Section 9.02.  Paying Agents; Appointment and Acceptance of Duties. (a) Issuer shall appoint one or more Paying Agents for the Bonds, and may at any time or from time to time appoint one or more other Paying Agents. All Paying Agents appointed shall have the qualifications set forth in Section 9.13 for a successor Paying Agent. The Trustee is hereby appointed as initial Paying Agent.

(b) Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to Issuer and to the Trustee a written acceptance thereof.

(c) Unless otherwise provided, the principal corporate trust offices of the Paying Agents are designated as the respective offices or agencies of Issuer for the payment of the interest on and principal or Redemption Price of the Bonds.

Section 9.03.  Responsibilities of Fiduciaries. (a) The recitals of fact herein and in the Bonds contained shall be taken as the statements of Issuer and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, and no Fiduciary shall incur any liability in respect thereof.
Furthermore, no Fiduciary shall be responsible for any offering documents (except for information provided by any Fiduciary for inclusion in such offering documents). The Trustee shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid by such Fiduciary in accordance with the provisions of this Indenture to Issuer or to any other Person. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or undertake any suit or proceeding under this Indenture or to enter any appearance in or defend any suit in respect thereof, or to advance any of its own moneys, expend or risk its own funds or otherwise incur any financial liability unless properly indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other anticipated disbursements, and against all liability except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. To the extent permitted by law, Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of any of its duties hereunder unless properly indemnified to its satisfaction. Subject to the provisions of subsection (b), no Fiduciary shall be liable in connection with the performance of its duties hereunder except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. Notwithstanding anything to the contrary, the permissive rights of any Fiduciary to do things enumerated under this Indenture shall not be construed as duties.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person’s own affairs. Any provision of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section 9.03 and Section 9.04.

(c) [Reserved].

(d) Notwithstanding anything to the contrary herein, Issuer acknowledges and agrees that the Trustee is not acting as the disclosure or dissemination agent for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934 in connection with any notice required to be posted with the Municipal Securities Rulemaking Board via its EMMA system.

Section 9.04. Evidence on Which Fiduciaries May Act. (a) Each Fiduciary, upon receipt of any notice, direction, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with a consultant, accountant or counsel, who may or may not be a consultant, accountant or counsel to Issuer, and
the opinion of such consultant, accountant or counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument.

(b) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of Issuer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Indenture upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Neither the Trustee, the Bond Registrar, the tender agent, nor the Paying Agent shall be bound to recognize any Person as a Bondholder or to take any action at its request unless its Bond shall be deposited with such entity or satisfactory evidence of the ownership of such Bond shall be furnished to such entity.

(c) The Trustee shall have the right to accept and act upon directions given pursuant to this Indenture, or any other document reasonably relating to the Bonds and delivered using Electronic Means; provided, however, that Issuer shall provide to the Trustee a Written Certificate of Issuer listing Authorized Officers with the authority to provide such directions and containing specimen signatures of such Authorized Officers, which Written Certificate of Issuer shall be amended whenever a person is to be added or deleted from the listing. If Issuer elects to give the Trustee directions using Electronic Means and the Trustee in its discretion elects to act upon such directions, the Trustee’s understanding of such directions shall be deemed controlling. Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such directions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the Written Certificate of Issuer provided to the Trustee have been sent by such Authorized Officer. Issuer shall be responsible for ensuring that only Authorized Officers transmit such directions to the Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys issued by the Trustee as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such directions notwithstanding such directions conflict or are inconsistent with a subsequent written direction. Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Trustee and that there may be more secure methods of transmitting directions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 9.05. Compensation. Issuer shall pay or cause to be paid to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and also all
reasonable expenses, charges, legal fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Indenture, in accordance with the agreements made from time to time between Issuer and the Fiduciary. Subject to the provisions of Section 9.03, Issuer further agrees, to the extent permitted by applicable law, to indemnify and save each Fiduciary harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to such Fiduciary’s negligence or willful misconduct.

Section 9.06. Certain Permitted Acts. Any Fiduciary, individually or otherwise, may become the owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds then Outstanding. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

Section 9.07. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties created by this Indenture by giving not less than 60 days’ written notice to Issuer and mailing notice thereof to the Holders of Bonds then Outstanding, specifying the date when such resignation shall take effect, and such resignation shall take effect upon the day specified in such notice unless (a) previously a successor shall have been appointed by Issuer or the Bondholders as provided in Section 9.09, in which event such resignation shall take effect immediately on the appointment of such successor, or (b) a successor shall not have been appointed by Issuer or the Bondholders as provided in Section 9.09 on such date, in which event such resignation shall not take effect until a successor is appointed.

Section 9.08. Removal of the Trustee. The Trustee may be removed with 30 days’ prior notice with or without cause by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of Issuer. So long as no Event of Default, or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Trustee may be removed at any time, with or without cause, by delivery of a Written Certificate of Issuer to the Trustee with respect to the foregoing. Notwithstanding the foregoing, any such removal of the Trustee shall not be effective until a successor Trustee has been appointed pursuant to Section 9.09.

Section 9.09. Appointment of Successor Trustee. (a) In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor Trustee may be appointed by Issuer by a duly executed written instrument signed by an Authorized Officer.
(b) If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 60 days after the Trustee shall have given to Issuer written notice as provided in Section 9.07 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or for any other reason whatsoever, the Trustee or the Holder of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under the provisions of this Section 9.09 in succession to the Trustee shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least $100,000,000 if there be such a bank with trust powers or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 9.10. Transfer of Rights and Property to Successor Trustee. Any successor trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor Trustee, and also to Issuer, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the Written Request of Issuer or of the successor Trustee, at the cost and expense of Issuer, execute, acknowledge and deliver such instrument of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property, rights, interests and estates held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by Issuer. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

Section 9.11. Merger or Consolidation. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank with trust powers or trust company organized under the laws of any state of the United States or a national banking association and shall be authorized by law to perform all the duties imposed upon it by this Indenture and shall meet the qualifications set forth in Section 9.09(c), shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

Section 9.12. Adoption of Authentication. In case any of the Bonds contemplated to be issued under this Indenture shall have been authenticated but not delivered, any successor Trustee
may adopt the certificate of authentication of any predecessor Trustee so authenticating such
Bonds and deliver such Bonds so authenticated; and in case any of the said Bonds shall not have
been authenticated, any successor Trustee may authenticate such Bonds in the name of the
predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate
shall have the full force which it is provided, anywhere in said Bonds or in this Indenture, that the
certificate of the Trustee shall have.

Section 9.13. Resignation or Removal of Paying Agent and Appointment of Successor.
(a) Any Paying Agent may at any time resign and be discharged of the duties and obligations
created by this Indenture by giving at least [60] days’ written notice to Issuer, the Trustee and the
other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with
such Paying Agent and the Trustee and signed by an Authorized Officer. Any successor Paying
Agent shall be appointed by Issuer and shall be a bank or trust company organized under the laws
of any state of the United States or a national banking association, having capital stock, surplus
and undivided earnings aggregating at least $50,000,000, and willing and able to accept the office
on reasonable and customary terms and authorized by law to perform all the duties imposed upon
it by this Indenture.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent
shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, at the
reasonable cost and expense of Issuer to the extent such Paying Agent is not acting as the Trustee
at the time of such resignation or removal, or if there be no successor, to the Trustee. In the event
that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act
as such Paying Agent.

Section 9.14. Trustee’s Reliance. The Trustee may conclusively rely, and shall be
protected in acting upon any notice, direction, ordinance, resolution, request, consent, order,
certificate, report, opinion, bond, statement, facsimilie transmission, electronic mail or other paper
or document furnished to the Trustee pursuant to any provision of this Indenture and that is
believed by the Trustee to be genuine and to have been signed or presented by the proper party or
parties and in conformity with the formal requirements of this Indenture. The Trustee may consult
with any consultant, account, or counsel, who may or may not be counsel to Issuer, and the opinion
of such consultant, accountant, or counsel shall be full and complete authorization and protection
in respect of any action taken or suffered by Trustee under this Indenture in good faith and in
accordance therewith. The Trustee shall be under no duty to make any investigation or inquiry into
any statements contained or matters referred to in any such instrument. Any request, direction,
authority or consent given by the Holders of any Bond shall be conclusive and binding upon all
Holders of the same Bond and any Bond issued in its place.

Section 9.15. Trustee’s Liability. (a) The Trustee shall not be liable with respect to any
action taken or omitted to be taken by it in good faith, in accordance with the provisions of this
Indenture, in accordance with the direction of the Holders of a majority in principal amount of the
Outstanding Bonds, relating to the time, method and place of conducting any proceeding for any
remedy available to the Trustee, or, except for its negligence or willful misconduct, exercising any
trust or power conferred upon the Trustee, under this Indenture with respect to the Bonds.
(b) The Trustee shall not be deemed to have knowledge of an Event of Default except for those Events of Default in Sections 8.1(a) and (b) unless a Responsible Officer of the Trustee shall have actual knowledge of such Event of Default. As used herein, “actual knowledge” shall mean the actual fact or statement of knowing without any independent duty to make any investigation with regard thereto.

(c) The Trustee’s rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All rights, benefits, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

(d) Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of Issuer, and such Written Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Instrument, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in connection with the performance or exercise of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(f) Under no circumstances shall the Trustee in any of its capacities hereunder be liable in its individual capacity for the obligations evidenced by the Bonds or be subject to any personal liability or accountability by reason of the issuance of this Bond or in respect of any undertakings by the Trustee under this Indenture. In accepting the trust hereby created, the Trustee acts solely as Trustee for the holders of the Bonds and not in its individual capacity, and all persons, including without limitation the holders of the Bonds and Issuer, having any claim against the Trustee arising from this Indenture shall look only to the Funds and Accounts held by the Trustee hereunder for payment except as otherwise provided herein.

(g) To the extent permitted by law, Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of any of its duties hereunder, except to the extent that any such loss, damage, claim, liability or expense was due to Trustee’s own negligence or willful misconduct.

Section 9.16. Trustee’s Agents or Attorneys. The Trustee may execute any of its trusts or powers under this Indenture or perform any of its duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for
any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

**ARTICLE X**

**SUPPLEMENTAL INDENTURES**

Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders. Issuer and the Trustee may from time to time, subject to the conditions and restrictions in this Indenture contained, enter into a Supplemental Indenture or Indentures, in form satisfactory to the Trustee, which shall thereafter form a part hereof, without the consent of the Bondholders for any one or more of the following purposes:

(a) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Indenture;

(b) To insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(c) To make any other modification or amendment of this Indenture which the Trustee shall in its sole discretion determine will not have a material adverse effect on the Bondholders or the Interest Rate Swap Counterparty; and in making such a determination, the Trustee shall be entitled to rely conclusively upon an Opinion of Counsel and/or certificates of investment bankers or other financial professionals or consultants;

(d) To add to the covenants and agreements of Issuer in this Indenture, other covenants and agreements to be observed by Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(e) To add to the limitations and restrictions in this Indenture, other limitations and restrictions to be observed by Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) To authorize the issuance of Refunding Bonds;

(g) To authorize, in compliance with all applicable law, Bonds to be issued in the form of coupon Bonds registrable as to principal only and, in connection therewith, specify and determine the matters and things relative to the issuance of such coupon Bonds, including provisions relating to the timing and manner of provision of any notice required to be given hereunder to the Holders of such coupon Bonds, which are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first authentication and delivery of such coupon Bonds;
(h) To provide for the execution of a Commodity Swap in accordance with the provisions hereof;

(i) To provide for a Liquidity Facility and Liquidity Facility Provider in accordance with the provisions hereof;

(j) To confirm, as further assurance, any security interest, pledge or assignment under, and the subjection to any security interest, pledge or assignment created or to be created by, this Indenture of the Revenues or of any other moneys, securities or funds;

(k) To add to the Events of Default in this Indenture additional Events of Default;

(l) To add to this Indenture any provisions relating to the application of interest earnings on any Fund or Account under this Indenture required by law to preserve the exclusion of interest on Bonds issued from gross income for federal income tax purposes;

(m) To evidence the appointment of a successor Trustee; or

(n) If the Bonds affected by such change are rated by a Rating Agency, to make any change upon receipt of a Rating Confirmation with respect to the Bonds so affected.

Each Supplemental Indenture authorized by this Section shall become effective as of the date of its execution and delivery by Issuer and the Trustee or such later date as shall be specified in such Supplemental Indenture.

A Supplemental Indenture will be deemed to not materially adversely affect the Holders of any Bonds that are subject to mandatory tender on or before the effective date of the Supplemental Indenture.

Section 10.02. Supplemental Indentures Effective With Consent of Bondholders. At any time or from time to time, subject to Section 10.03(e) and Section 11.05(b), a Supplemental Indenture may be entered into by Issuer and the Trustee subject to notice to and consent by Bondholders in accordance with and subject to the provisions of Article XI, which Supplemental Indenture, upon compliance with the provisions of said Article XI, shall become fully effective in accordance with its terms as provided in said Article XI.

Section 10.03. General Provisions. (a) This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article X and Article XI. Nothing contained in this Article X or Article XI shall affect or limit the right or obligation of Issuer to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 7.04 or the right or obligation of Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in this Indenture it is provided shall be delivered to said Fiduciary.
(b) Any Supplemental Indenture referred to and permitted or authorized by Section 10.01 may be entered into between Issuer and the Trustee without the consent of any of the Bondholders, but shall become effective only on the conditions, to the extent and at the time provided in said Section. A copy of every Supplemental Indenture shall be accompanied by an Opinion of Counsel stating that such Supplemental Indenture has been duly and lawfully executed in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon Issuer and enforceable in accordance with its terms; provided, that such Opinion of Counsel may take exception as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors’ rights generally, and judicial discretion and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy.

(c) The Trustee is hereby authorized to enter into any Supplemental Indenture referred to and permitted or authorized by Section 10.01 or Section 10.02 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an Opinion of Counsel that such Supplemental Indenture is authorized or permitted by the provisions of this Indenture.

(d) No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto; provided, however this section shall not affect the rights of the Holders or Issuer to remove the Trustee as provided in Section 9.08 herein.

(e) Notwithstanding Section 12.05, no Supplemental Indenture (or other amendment to this Indenture) shall change or modify (i) the order of priority of deposits set forth in Section 5.05(a), (ii) the priority of the application of funds following an Event of Default as set forth in Section 8.03, (iii) the definition of Operating Expenses, (iv) any of the rights or interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) or the Energy Supplier, as purchaser under the Receivables Purchase Provisions, granted herein or in the Commodity Swap, the Interest Rate Swap or the Receivables Purchase Provisions, as the case may be, (v) the provisions of Section 5.04(b) regarding the sale by the Trustee of Put Receivables, or (vi) the provisions of Section 5.08(b) regarding the sale by the Trustee of Call Receivables (A) in each case unless the prior written consent of the Commodity Swap Counterparty has been obtained, and the Commodity Swap Counterparty shall have full right to enforce this provision, and (B) in the case of clause (iv) of this Section 10.03(e), unless the prior written consent of the Interest Rate Swap Counterparty and/or the Energy Supplier, as applicable, has been obtained.

**ARTICLE XI**

**AMENDMENTS**

Section 11.01. Mailing. Any provision in this Article XI for the mailing of a notice or other paper to Bondholders shall be fully complied with if it is mailed postage prepaid only (a) to each
registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of Issuer, and (b) to the Trustee.

Section 11.02. Powers of Amendment. Any modification or amendment of this Indenture and of the rights and obligations of Issuer and of the Holders of the Bonds thereunder may be made by a Supplemental Indenture, subject to Section 10.03(e), with the written consent given as provided in Section 11.03(a) of the Holders of not less than a majority in principal amount of Outstanding Bonds, and (b) in case the modification or amendment changes the terms of any Sinking Fund Installment, of the Holders of not less than a majority in principal amount of Outstanding Bonds of the particular maturity entitled to such Sinking Fund Installment; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like maturity remain Outstanding (or are subject to mandatory purchase) the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section; and provided further, however, that if such modification or amendment would adversely affect the Interest Rate Swap Counterparty, such modification or amendment shall be subject to the prior written consent of the Interest Rate Swap Counterparty. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, the Bonds shall be deemed to be affected by a modification or amendment of this Indenture if the same adversely affects or diminishes the rights of the Holders of Bonds in any material respect. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment Bonds would be materially affected by any modification or amendment of this Indenture and any such determination shall be binding and conclusive on Issuer and all Holders of Bonds. For purposes of this Section, the Holders of any Bonds may include the initial Holders thereof, regardless of whether such Bonds are being held for resale.

Section 11.03. Consent of Bondholders. Issuer and the Trustee may at any time enter into a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 11.02 to take effect when and as provided in this Section 11.03. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by Issuer to Bondholders (but failure to mail such copy and request shall not affect the validity of the Supplemental Indenture when consented to as in this Section 11.03 provided). Such Supplemental Indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of Holders of the percentages of Outstanding Bonds specified in Section 11.02, subject to Section 11.05(b), (b) the written consent of the Interest Rate Swap Counterparty if required by Section 11.02, and (c) an Opinion of Counsel stating that such Supplemental Indenture has been duly and lawfully executed by Issuer in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon Issuer and enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors’ rights generally and may state
that no opinion is being rendered as to the availability of any particular remedy. For purposes of clause (a) of the preceding sentence, the written consent of the Bondholder shall be deemed to have been received if the amendment is expressly referred to in the Supplemental Indenture authorizing such Bonds and in the text of such Bonds and such Bonds recite that such Bondholder shall be deemed to have consented to such amendments by accepting such Bonds. Otherwise, each such consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 12.02. A certificate or certificates executed by the Trustee and filed with the Trustee and Issuer stating that it has examined such proof and that such proof is sufficient in accordance with Section 12.02 shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates of the Trustee. Any such consent shall be irrevocable and shall be binding upon the Holder of the Bonds giving such consent and, anything in Section 12.02 to the contrary notwithstanding, upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice of such consent). At any time after the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Indenture (or have deemed to have consented to such Supplemental Indenture), the Trustee shall make and file with the Trustee and Issuer a written statement that the Holders of such required percentages of Bonds have consented to, such Supplemental Indenture. Such written statements shall be conclusive that such consents have been received. At any time thereafter, notice stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture entered into by Issuer and the Trustee on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in this Section 11.03, may be given to Bondholders by the Trustee by mailing such notice to Bondholders (but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 11.03 provided). A record, consisting of the certificates or statements required or permitted by this Section 11.03 to be made by the Trustee, shall be proof of the matters therein stated.

Section 11.04. Notifications by Unanimous Consent. The terms and provisions of this Indenture and the rights and obligations of Issuer and of the Holders of the Bonds thereunder may be modified or amended in any respect upon the execution of a Supplemental Indenture by the Trustee and Issuer, the consent of the Holders of all of the Bonds then Outstanding (such consent to be given as provided in Section 11.03), and the consent of the Interest Rate Swap Counterparty if required by Section 11.02; provided, however, that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary or any of the provisions referenced in Section 10.03(e) without the filing with the Trustee of the written assent thereto of such Fiduciary or the Commodity Swap Counterparty, respectively, in addition to the consent of the Bondholders.

Section 11.05. Exclusion of Bonds. (a) Bonds owned or held by or for the account of Issuer shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI, and Issuer shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article XI. At the time of any consent or other action taken under this Article XI, Issuer shall furnish the Trustee a
certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

(b) Bonds for which a Bondholder has submitted a notice of abstention in response to a request for consent received pursuant to Section 11.03 shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI with respect to any Supplemental Indenture to be entered into by Issuer and the Trustee; provided, that, such notice of abstention shall not apply with respect to any proposed amendments of Section 8.01.

Section 11.06. Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as provided in Article X or this Article XI may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by Issuer and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and presentation of its Bond for the purpose at the principal corporate trust office of the Trustee or upon any transfer or exchange of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer or exchange by the Trustee as to any such action. If Issuer or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and Issuer to conform to such action shall be prepared, authenticated and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same maturity then Outstanding, upon surrender of such Bonds.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Defeasance. (a) If Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated in the Bonds and in this Indenture and shall pay or cause to be paid all amounts due or to become due due to the Interest Rate Swap Counterparty under the Interest Rate Swap, then the pledge of all covenants, agreements and other obligations of Issuer to the Bondholders, shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds; provided, however, that this Indenture shall not be discharged until (i) Issuer shall have paid and satisfied all claims, charges and expenses that constitute Operating Expenses hereunder, (ii) the Trustee shall have received an Opinion of Counsel to the effect that all conditions precedent to the satisfaction and discharge of this Indenture have been fulfilled and (iii) receipt by the Trustee of a Rating Confirmation. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by Issuer to be prepared and filed with Issuer and, upon the request of Issuer, shall execute and deliver to Issuer all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to Issuer all moneys or securities held by them pursuant to this Indenture which are not required for the payment of principal or Redemption Price, if applicable, on Bonds not theretofore surrendered for such payment or redemption. If Issuer shall pay or cause to be paid, or there shall otherwise be paid, to
the Holders of any Outstanding Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of Issuer to the Holders of such Bonds shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds.

(b) Bonds or interest installments for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit by Issuer of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a). In addition, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) upon compliance with the provisions of subsection (c).

(c) Subject to the provisions of subsection (d) of this Section, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, Issuer shall have given to the Trustee irrevocable written instructions accepted in writing by the Trustee to mail as provided in Article IV notice of redemption of such Bonds (other than Bonds which have been purchased by the Trustee at the direction of Issuer or purchased or otherwise acquired by Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of such notice of redemption) on said date, (ii) there shall have been deposited with the Trustee either moneys (including moneys withdrawn and deposited pursuant to Section 5.07(g)) in an amount which shall be sufficient, or Defeasance Securities (including any Defeasance Securities issued or held in book entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or Redemption Price, if applicable, and interest due and to become due on said Bonds (with such interest being calculated at the Maximum Rate with respect to any Bonds with interest rates that are not fixed to their redemption or maturity date, as applicable) on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding 60 days, Issuer shall have given the Trustee in form satisfactory to it irrevocable written instructions to mail, as soon as practicable, a notice to the Holders of such Bonds at their last addresses appearing upon the registry books at the close of business on the last Business Day of the month preceding the month for which notice is mailed that the deposit required by (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section 12.01 and stating such maturity or redemption date upon which moneys are expected, subject to the provisions of subsection (d) of this Section 12.01, to be available for the payment of the principal or Redemption Price, if applicable, on said Bonds (other than Bonds which have been purchased by the Trustee at the direction of Issuer or purchased or otherwise acquired by Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of the notice of redemption referred to in clause (i)). Any notice of redemption mailed pursuant to the preceding sentence with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity shall specify the letter and number
or other distinguishing mark of each such Bond. The Trustee shall, as and to the extent necessary, apply moneys held by it pursuant to this Section 12.01 to the retirement of said Bonds in amounts equal to the unsatisfied balances (determined as provided in Section 5.10(c)) of any Sinking Fund Installments with respect to such Bonds, all in the manner provided in this Indenture. The Trustee shall, if so directed by Issuer (A) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (B) prior to the mailing of the notice of redemption referred to in clause (i) above with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, apply moneys deposited with the Trustee in respect of such Bonds and redeem or sell Defeasance Securities so deposited with the Trustee and apply the proceeds thereof to the purchase of such Bonds and, the Trustee shall immediately thereafter cancel all such Bonds so purchased; provided, however, that the moneys and Defeasance Securities remaining on deposit with the Trustee after the purchase and cancellation of such Bonds (or the deemed cancellation thereof) shall be sufficient to pay when due the Principal Installment or Redemption Price, if applicable, and interest due or to become due on all Bonds (calculated as described above), in respect of which such moneys and Defeasance Securities are being held by the Trustee on or prior to the redemption date or maturity date thereof, as the case may be. If, at any time (1) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (2) prior to the mailing of the notice of redemption referred to in clause (i) with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, Issuer shall purchase or otherwise acquire any such Bonds and deliver such Bonds to the Trustee prior to their maturity date or redemption date, as the case may be, the Trustee shall immediately cancel all such Bonds so delivered; such delivery of Bonds to the Trustee shall be accompanied by directions from Issuer to the Trustee as to the manner in which such Bonds are to be applied against the obligation of the Trustee to pay or redeem Bonds deemed paid in accordance with this Section 12.01. The directions given by Issuer to the Trustee referred to in the preceding sentences shall also specify the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to pay Bonds deemed paid in accordance with this Section 12.01 upon their maturity date or dates and the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to redeem Bonds deemed paid in accordance with this Section 12.01 on any date or dates prior to their maturity. In the event that on any date as a result of any purchases, acquisitions and cancellations or deemed cancellations of Bonds as provided in this Section 12.01 the total amount of moneys and Defeasance Securities remaining on deposit with the Trustee under this Section 12.01 is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of the remaining Bonds in order to satisfy clause (ii) of this subsection (c) of Section 12.01, the Trustee shall, if requested by Issuer, pay the amount of such excess to Issuer free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Except as otherwise provided in subsections (c) and (d) of this Section 12.01, neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Bonds; provided that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (x) to the extent such cash will not be required
at any time for such purpose, shall be paid over to Issuer as received by the Trustee, free and clear of any trust, lien or pledge securing said Bonds or otherwise existing under this Indenture, and (y) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Qualified Investments maturing at times and in amounts sufficient to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to Issuer, as received by the Trustee, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Notwithstanding anything contained herein to the contrary, Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against Defeasance Securities or the principal and interest received on Defeasance Securities.

(d) Anything in this Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds which remain unclaimed for six years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for six years after the date of deposit of such moneys if deposited with the Fiduciary after the said date when such Bonds became due and payable, shall, at the Written Request of Issuer, be repaid by the Fiduciary to Issuer, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to Issuer for the payment of such Bonds; provided, however, that before being required to make any such payment to Issuer the Fiduciary shall, at the expense of Issuer, cause to be published at least twice, at an interval of not less than seven days between publications, in the Authorized Newspaper, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the first publication of such notice, the balance of such moneys then unclaimed will be returned to Issuer.

Section 12.02. Evidence of Signatures of Bondholders and Ownership of Bonds. (a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and, except as otherwise provided in Section 11.03, shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of (1) the execution of any such instrument, or of an instrumentappointing any such attorney, or (2) the holding by any Person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(i) The fact and date of the execution by any Bondholder or its attorney of such instruments may be proved by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of
such corporation, association or partnership, such signature, guarantee, certificate or affidavit shall also constitute sufficient proof of its authority.

(ii) The amount of Bonds transferable by delivery held by any Person executing any instrument as a Bondholder, the date of holding such Bonds, and the numbers and other identification thereof, may be proved by a certificate, which need not be acknowledged or verified, in form satisfactory to the Trustee, executed by the Trustee or by a member of a financial firm or by an officer of a bank, trust company, insurance company, or financial corporation or other depository wherever situated, showing at the date therein mentioned that such Person exhibited to such member or officer or had on deposit with such depository the Bonds described in such certificate. Such certificate may be given by a member of a financial firm or by an officer of any bank, trust company, insurance company or financial corporation or depository with respect to Bonds owned by it, if acceptable to the Trustee. In addition to the foregoing provisions, the Trustee may from time to time make such reasonable regulations as it may deem advisable permitting other proof of holding of Bonds transferable by delivery.

(b) The ownership of Bonds registered other than to bearer and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

(c) Any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by Issuer or any Fiduciary in accordance therewith.

Section 12.03. Moneys Held for Particular Bonds. The amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Bonds entitled thereto.

Section 12.04. Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Indenture shall at all times during regular business hours (upon reasonable prior written notice) be subject to the inspection of Issuer, any other Fiduciary, and any Bondholder and their agents and their representatives, any of whom may make copies thereof, subject to such reasonable regulations as such Fiduciary may from time to time determine to be advisable or required by law.

Section 12.05. Parties Interested Herein. Nothing in this Indenture expressed or implied, except for the rights and interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) and the Energy Supplier, as purchaser under the Receivables Purchase Provisions, as described in Section 10.03(e), and the lien on the Commodity Swap Payment Fund granted to the Commodity Swap Counterparty, is intended or shall be construed to confer upon, or to give to, any Person or corporation, other than Issuer, the Fiduciaries, the Holders of the Bonds, and any Depository, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation thereof; and, except as provided in Section 10.03(e), all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of
Issuer shall be for the sole and exclusive benefit of Issuer, the Fiduciaries, the Holders of the
Bonds, the Interest Rate Swap Counterparty and any Depository.

Section 12.06. No Recourse on the Bonds. No recourse shall be had for the payment of the
principal of or interest on the Bonds or for any claim based thereon or on this Indenture against
any source other than the Trust Estate as provided in this Indenture, including against any member
of the Board or officer of Issuer, the Project Participant or any Person executing the Bonds.

Section 12.07. Publication of Notice; Suspension of Publication. (a) Any publication to be
made under the provisions of this Indenture in successive weeks or on successive dates may be
made in each instance upon any Business Day of the week and need not be made in the same
Authorized Newspaper for any or all of the successive publications but may be made in a different
Authorized Newspaper.

(b) If, because of the temporary or permanent suspension of the publication or general
circulation of any Authorized Newspaper or for any other reason, it is impossible or impractical to
publish any notice pursuant to this Indenture in the manner herein provided, then such publication
in lieu thereof as shall be made by Issuer with the written approval of the Trustee shall constitute
a sufficient publication of such notice.

Section 12.08. Severability of Invalid Provisions. If any one or more of the covenants or
agreements provided in this Indenture on the part of Issuer or any Fiduciary to be performed should
be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed
severable from the remaining covenants and agreements, and shall in no way affect the validity of
the other provisions of this Indenture.

Section 12.09. Holidays. If the date for making any payment or the last date for performance
of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day,
such payment may be made or act performed or right exercised on the next succeeding Business
Day with the same force and effect as if done on the nominal date provided in this Indenture, and
no interest shall accrue for the period after such nominal date.

Section 12.10. Notices. Except as otherwise provided herein, all notices, requests, demands
and other communications required or permitted under this Indenture shall be deemed to have been
duly given if delivered or mailed, first class, postage prepaid (or sent by Electronic Means,
confirmed by mail, as aforesaid), as follows:

If to Issuer: [California Community Choice Financing Authority]
[______]
[______]
Telephone: [____ ___-____]
Attention: [____]
Email: [______]

With a copy to: [EBCE]
With a copy to:
[SVCE]

If to the Trustee, Paying Agent, the Bond Registrar, the Custodian or the Calculation Agent for the Index Rate Bonds:
[Trustee]  
[_____]  
[_____]  
Telephone: [____ __-____]  
Attention: [____]  
Email: [_____]

If to the Calculation Agent for Bonds bearing interest at a CPI Index Rate:
Morgan Stanley & Co., LLC  
1585 Broadway  
New York, NY 10036  
Telephone: (212) 761-4000  
Attention: agystruct@morganstanley.com

With a copy to:

Keith Cackowsky  
Morgan Stanley Energy Structuring, L.L.C.  
1585 Broadway  
New York, NY 10036  
Telephone: (914) 225-1548  
Attention: Keith.Cackowsky@morganstanley.com

or to such other Person or addresses as the respective party hereafter designates in writing to Issuer and the Trustee.

**Section 12.11. Notices to Rating Agencies.** Issuer shall provide to each Rating Agency rating the Bonds at the time: (a) notice of any amendment to this Indenture, the Energy Purchase Agreement, any Commodity Swap, any Energy Supply Contract, and Debt Service Fund Agreement or any other document relating to the Bonds or Energy Project; and (b) each notice provided to the Municipal Securities Rulemaking Board, through its EMMA system, pursuant to the Continuing Disclosure Undertaking executed by Issuer in connection with the issuance of the Bonds.

**Section 12.12. Counterparts.** This Indenture may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

[Signature page follows]
IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Indenture to be signed in its own name and on its behalf by an Authorized Officer, and as evidence of its acceptance of the trusts hereby created, [Trustee], the duly authorized Trustee, has caused this Indenture to be signed in its name and on its behalf by one of its officers duly authorized and its corporate seal to be hereunto affixed, attested by another of its officers duly authorized, all as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: ________________________________

[SEAL]

ATTEST:

__________________________________
[Title]

[TRUSTEE], as Trustee

By: ________________________________
Title: ______________________________

[SEAL]

ATTEST:

__________________________________
Attesting Party

[Signature page to Trust Indenture]
EXHIBIT A

FORM OF BONDS

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED No. ___

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
[ENERGY PROJECT REVENUE BOND
2021 SERIES [A-1][A-2]]

Maturity Date Issue Date CUSIP Interest Rate Mode

_______, 2021

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____________ DOLLARS

California Community Choice Financing Authority (the "Issuer"), acknowledges itself indebted and for value received hereby promises to pay, in the manner and from the source hereinafter provided, to the registered owner identified above, or registered assigns, on the Maturity Date stated above, unless this Bond shall have been called for redemption and payment of the Redemption Price shall have been duly made or provided for, upon presentation and surrender hereof, the principal amount identified above, and to pay, in the manner and from the source hereinafter provided, to the registered owner hereof interest on the balance of said principal amount from time to time remaining unpaid at the rate set forth above, until payment in full of such principal amount.

The following paragraph shall be inserted in the Series 2021A Bonds:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at the rate per annum set forth above, computed on the basis of a 360-day year consisting of 12 thirty-day
months, payable on [__________] and [__________] of each year, commencing [__________], 2021.

The following paragraph shall be inserted for any LIBOR Index Rate Bonds, and the phrase “LIBOR Index Rate” shall be inserted under the caption “Interest Rate” immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a LIBOR Index Rate equal to the sum of (a) the Applicable Spread of [_____] basis points ([____%]) plus (b) the product of (i) the One-Month LIBOR Index as of the day of determination multiplied by (ii) the Applicable Factor of [_____]% (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[____].

The following paragraph shall be inserted in the Series 2021A-2 Bonds, and the phrase “SIFMA Index Rate” shall be inserted under the caption “Interest Rate” immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a SIFMA Index Rate equal to the sum of (a) the SIFMA Index as of the day of determination plus (b) the Applicable Spread of [_____] basis points ([____%]) (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[____].

The following paragraph shall be inserted for any CPI Index Rate Bonds, and the phrase “CPI Index Rate” shall be inserted under the caption “Interest Rate” immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a CPI Index Rate determined in accordance with Section 2.14 of the Indenture (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 360-day year of twelve 30-day calendar months and payable on the first Business Day of each Month, commencing on the first Business Day of 20[____].
THE ISSUER IS OBLIGATED TO PAY THE PRINCIPAL OF, REDEMPTION PRICE OF, AND INTEREST ON THIS BOND SOLELY FROM THE REVENUES (AS SUCH TERM IS DEFINED IN THE INDENTURE HEREINAFTER REFERRED TO) AND OTHER FUNDS OF THE ISSUER PLEDGED THEREFOR IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE. THIS BOND IS NOT A DEBT OF THE ISSUER, OF ANY PUBLIC AGENCY, OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN THEREOF OR ANY PROJECT PARTICIPANT OF THE ISSUER PURSUANT TO AN ENERGY SUPPLY CONTRACT (AS DEFINED HEREIN) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. PURSUANT TO THE INDENTURE, SUFFICIENT REVENUES HAVE BEEN PLEDGED AND WILL BE SET ASIDE INTO SPECIAL FUNDS BY THE ISSUER TO PROVIDE FOR THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND AND ALL BONDS OF THE SERIES OF WHICH IT IS A PART.

THIS BOND SHALL NOT BE A DEBT OF ANY PUBLIC AGENCY OR ANY POLITICAL SUBDIVISION OR OF THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN OF THE STATE, OR OF ANY PROJECT PARTICIPANT, AND NEITHER THE STATE OF CALIFORNIA NOR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN THEREOF, NOR THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE OR ANY PROJECT PARTICIPANT SHALL BE LIABLE THEREON. THIS BOND SHALL BE PAYABLE FROM THE REVENUES AND SPECIAL FUNDS PROVIDED FOR IN THE INDENTURE AND NOT FROM ANY OTHER FUNDS OR PROPERTIES OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

This Bond and the issue of Bonds of which it is a part are issued in conformity with and after full compliance with the Constitution of the State of California and pursuant to the provisions of the Act as defined in the Indenture and all other laws applicable thereto.

This Bond is a special, limited obligation of Issuer and is one of the [Energy Project Revenue Bonds] of Issuer initially issued in [two] separate series (collectively, the “Bonds”) under and by virtue of the Act and pursuant to a Trust Indenture, dated as of [_________] 1, 2021 (the “Indenture”), between Issuer and [Trustee], as trustee (the “Trustee”), for the purpose of providing funds to pay the Cost of Acquisition of Issuer’s Energy Project. The aggregate principal amount of Bonds issued pursuant to the Indenture is limited to $[____________]. This Bond is one of the Series of Bonds designated as “[Energy Project Revenue Bonds, 2021 Series [A-1][A-2]],” dated as of the Issue Date identified above.

All Bonds issued and to be issued under the Indenture are and will be equally and ratably secured by the pledge and covenants made therein, except as otherwise expressly provided or permitted in or pursuant to the Indenture.

Copies of the Indenture are on file at the office of Issuer in San Rafael, California, and at the designated corporate trust office of [Trustee], in [CITY, STATE], and reference to the Indenture and the Act is made for a description of the pledge and covenants securing the Bonds, the nature, manner and extent of enforcement of such pledge and covenants, the terms and conditions upon which the Bonds and certain other Bonds were issued simultaneously thereunder, and a statement of the rights, duties, immunities and obligations of Issuer and of the Trustee. Such pledge and other obligations of Issuer under the Indenture may be discharged at or prior to the
maturity or redemption of the Bonds upon the making of provision for the payment thereof on the terms and conditions set forth in the Indenture.

Except as otherwise provided herein and unless the context clearly indicates otherwise, words and phrases used herein shall have the same meanings as such words and phrases in the Indenture.

Issuer has established a book entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, a Securities Depository (or its nominee) will be the registered owner of this Bond. By acceptance of a confirmation of purchase, delivery or transfer, the Beneficial Owner of this Bond shall be deemed to have agreed to this arrangement. The Securities Depository (or its nominee), as registered owner of this Bond, shall be treated as the owner of it for all purposes.

Issuer will pay the principal, Redemption Price and Purchase Price of, and interest on this Bond solely from the Revenues and other funds and amounts pledged therefor pursuant to the Indenture. Interest will accrue on the unpaid portion of the principal of this Bond from the last date to which interest was paid or duly provided for or, if no interest has been paid or duly provided for, from the date of the original issuance of the Bonds, until the entire principal amount of this Bond is paid or duly provided for, and such interest shall be paid in the manner and on the Interest Payment Dates specified in the Indenture.

The Bonds are subject to acceleration, redemption and purchase prior to maturity upon the circumstances, at the times, in the amounts, upon payment of the amounts, with the notice, upon the other terms and provisions and with the effect set forth in the Indenture.

This Bond may be transferred or exchanged as provided in the Indenture. Issuer and the Trustee may treat and consider the person in whose name this Bond is registered as the Holder and the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal, purchase price or Redemption Price hereof and interest due hereon and for all other purposes whatsoever.

To the extent and in the respects permitted by the Indenture, the Indenture may be modified or amended by action on behalf of Issuer taken in the manner and subject to the conditions and exceptions prescribed in the Indenture.

The Holder or Beneficial Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the pledge or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in, or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of California or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of Bonds, together with all other
indebtedness of Issuer, is within every debt and other limit prescribed by said Constitution and statutes.

This Bond shall not be valid until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Treasurer/Controller, and attested by the manual or facsimile signature of its Secretary, all as of the issue date specified above.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: ________________________________
    Treasurer/Controller

ATTEST:

_______________________________
Secretary
[FORM OF CERTIFICATE OF AUTHENTICATION]

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the [Energy Project Revenue Bonds, 2021 Series [A-1][A-2]], of California Community Choice Financing Authority.

Date of registration and authentication: __________, 20[___].

[TRUSTEE], as Trustee

By: __________________________________________
Name: _________________________________________
Title: __________________________________________

Customary abbreviations may be used in the name of a Bondholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/T/M/A (= Uniform Transfers to Minors Act).

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>TEN COM</td>
<td>as tenants in common</td>
</tr>
<tr>
<td>TEN ENT</td>
<td>as tenants by the entirety</td>
</tr>
<tr>
<td>JT TEN</td>
<td>as joint tenants with right of survivorship and not as tenants in common</td>
</tr>
<tr>
<td>U/T/M/A</td>
<td>Uniform Transfers to Minors Act</td>
</tr>
</tbody>
</table>

Additional abbreviations may also be used though not in list above.
[FORM OF ASSIGNMENT]

For Value Received, the undersigned sells, assigns and transfers unto

____________________________________________________________________________

Please Insert Social Security or
Other Identifying Number of Assignee

(Name and Address of Assignee)

____________________________________________________________________________

the within Bond of the California Community Choice Financing Authority, and hereby irrevocably constitutes and appoints ____________________________ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Date: __________________

SIGNATURE GUARANTEED:

________________________________________

NOTICE: Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guarantee program” as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.
EXHIBIT B

FORM OF INDEX RATE DETERMINATION CERTIFICATE


Reference is made to Section [2.09][and][2.14] of the Trust Indenture, dated as of [__________] 1, 2021 (the “Indenture”), between the California Community Choice Financing Authority (the “Issuer”) and [Trustee], as trustee (the “Trustee”), relating to the above captioned Bonds. Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Indenture.

The undersigned Authorized Representative of Issuer hereby notifies the Trustee and the Rating Agencies as follows with respect to the Index Rate Period commencing on the date hereof:

Include the following text separately for each Series of Index Rate Bonds:

(i) the Index Rate shall be the [LIBOR/SIFMA] Index Rate and the Index Rate Period shall be ________________;

(ii) if the Index Rate shall be the LIBOR Index Rate, (A) the LIBOR Index for the applicable LIBOR Period shall be the Intercontinental Exchange London interbank offered rate for United States dollar deposits, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on ________________, the second Business Day preceding the [Initial Issue Date][Index Rate Reset Date], (B) the Applicable Factor, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be ___% of LIBOR, and (C) the LIBOR Period shall be ________________.

(iii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>APPLICABLE SPREAD</th>
<th>MATURITY DATE</th>
<th>APPLICABLE SPREAD</th>
</tr>
</thead>
</table>

(iv) if, during any [SIFMA/LIBOR] Index Rate Period, the [SIFMA/LIBOR] Index Rate is not reported by, or otherwise ceases to be available from, the relevant source, the substitute or replacement Index Rate, as determined by Issuer, for the Index Rate Period shall be the substitute determined in writing by Issuer;

(v) the Index Rate Tender Date shall be ________________;

(vi) the Interest Payment Date[s] shall be ________________; and
(vii) the Index Rate Reset Date[s] shall be _____________.

Include the following text for any Series of CPI Bonds:

(i) the CPI Interest Period shall be _____________.

(ii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

<table>
<thead>
<tr>
<th>Maturity Date</th>
<th>Applicable Spread</th>
<th>Maturity Date</th>
<th>Applicable Spread</th>
</tr>
</thead>
</table>

(iii) the CPI Index Rate for each Maturity Date shall be calculated, in accordance with Section 2.14 of the Indenture, using the CPI Index Rate Formula, which means \[\frac{(CPI_t - CPI_{t-12})}{CPI_t - 12} + \text{Applicable Spread}\], where:

- \(CPI_t\) = CPI for the applicable Reference Month;
- \(CPI_{t-12}\) = CPI for the twelfth month prior to the applicable Reference Month;
- Applicable Spread = [ ]%; and
- Reference Month = the 3rd calendar month preceding each CPI Index Rate Reset Date.

(iv) the Mandatory Purchase Date shall be _____________.

(v) the Interest Payment Date[s] shall be the first Business Day of each Month, commencing on the first Business Day of [______], [20__]; and

(vi) CPI Index Rate Reset Date[s] shall be the first Business Day of each calendar month; and

(vii) if, during any CPI Index Rate Period, the CPI is not reported by, or otherwise ceases to be available from, the relevant source, but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate.
IN WITNESS WHEREOF, I have set forth my hand this ____ day of ____________.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By __________________________________________
Name ________________________________________
Title _________________________________________

Please sign below to signify your acknowledgement of receipt of this Certificate and, as to the Underwriter or the Remarketing Agreement, as the case may be, your agreement with the terms set forth herein.

ACKNOWLEDGED AND RECEIVED:
[TRUSTEE], as Trustee

By __________________________________________
Name ________________________________________
Title _________________________________________

ACKNOWLEDGED, RECEIVED AND AGREED TO:

__________________________________________
as Underwriter

By __________________________________________
Name ________________________________________
Title _________________________________________
EXHIBIT C

[RESERVED]
EXHIBIT D

DIRECTION OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY TO REDEEM [ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

To: [Trustee], as Trustee (the “Trustee”)

DIRECTION IS HEREBY GIVEN by the California Community Choice Financing Authority (the “Issuer”) to the Trustee for Issuer’s [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the “Bonds”) issued pursuant to the Trust Indenture, dated as of [CLOSING MONTH] 1, 2021 between Issuer and the Trustee (the “Indenture”), to call the Bonds for redemption on ______________, 20__ (the “Redemption Date”) at a redemption price equal to (a) in the case of the Series 2021A Bonds [FOR REDEMPTION UNDER SECTION 4.03(a): the greater of (i) the Amortized Value of the Bonds, plus accrued interest to the Redemption Date, or (ii) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Bonds to be redeemed from and including the Redemption Date to the stated maturity date of such Bonds, discounted to the Redemption Date on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for the Bonds minus 0.25% per annum] OR [FOR REDEMPTION UNDER SECTION 4.03(b): the Amortized Value of the Bonds as of the first day of the month of redemption, plus accrued interest to the Redemption Date] and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the “Redemption Price”).

[“Amortized Value” means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond’s original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Indenture; provided that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.]

[“Applicable Tax Exempt Municipal Bond Rate” for the Bonds of any maturity shall be the “Comparable AAA General Obligations” yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the “Comparable AAA General Obligations” yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: ]
www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the “Comparable AAA General Obligations” yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semiannual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody’s and S&P with a maturity date equal to the stated maturity date of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent’s determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.]

The quotation agent selected by Issuer is ____________________. __________ ______________ shall calculate the Redemption Price and deliver it to you five Business Days (as defined in the Indenture) prior to the Redemption Date.

Issuer hereby directs you to cause notice of such optional redemption to be given pursuant to the provisions set forth in Section 4.04 of the Indenture to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee for that purpose, as of the Regular Record Date (as defined in the Indenture), such notice to be mailed by first class mail, postage prepaid, at least _______ (____) days prior to the Redemption Date, and such notice to be in substantially the form attached as Exhibit A hereto.

Dated: __________.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By ________________________________
Name ______________________________
Title ______________________________

ACKNOWLEDGED:
[TRUSTEE]

By ________________________________
Name ______________________________
Title ______________________________
EXHIBIT A

NOTICE OF CONDITIONAL OPTIONAL REDEMPTION OF
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
[ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

NOTICE IS HEREBY GIVEN to the holders of the following California Community Choice Financing Authority [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the “Bonds”), which were issued on [__________], 2021, that the Bonds listed below have been called for redemption prior to maturity on ____________, 202[___] (the “Redemption Date”), at a redemption price equal to (a) in the case of the Series 2021A Bonds, [the Amortized Value of the Bonds as of the Redemption Date, plus accrued interest to the Redemption Date][the greater of (i) the Amortized Value of the Bonds, plus accrued interest to the Redemption Date, or (ii) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Bonds to be redeemed from and including the Redemption Date to the stated maturity date of such Bonds, discounted to the Redemption Date on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for the Bonds minus 0.25% per annum], and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the “Redemption Price”).

“Amortized Value” means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond’s original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Trust Indenture dated as of [__________] 1, 2021; provided that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.

[“Applicable Tax Exempt Municipal Bond Rate” for the Bonds of any maturity shall be the “Comparable AAA General Obligations” yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable, as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the “Comparable AAA General Obligations” yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the “Comparable AAA General Obligations” yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily]
by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semiannual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody’s and S&P with a maturity date equal to the stated maturity date of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent’s determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.

<table>
<thead>
<tr>
<th>CUSIP NUMBER</th>
<th>MATURITY DATE</th>
<th>INTEREST RATE</th>
<th>OUTSTANDING AMOUNT</th>
<th>PRINCIPAL AMOUNT TO BE REDEEMED</th>
<th>REDEMPTION DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The quotation agent selected by the California Community Choice Financing Authority is __________ ______________. [________________ shall calculate the Redemption Price five Business Days (as defined in the Indenture) prior to the Redemption Date].

On the Redemption Date, there shall become due and payable on the Bonds to be redeemed, upon presentation and surrender of such Bonds as set forth below, the above mentioned Redemption Price, together with interest accrued and unpaid on the Bonds to be redeemed to such Redemption Date and, if payment has been made as provided for, then interest on the Bonds to be redeemed shall cease to accrue from and after the Redemption Date.

*The redemption of the Bonds is subject to the condition that the Redemption Price will be due and payable on the Redemption Date only if moneys sufficient to accomplish such redemption are held by the Trustee on the scheduled Redemption Date.*

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1 No representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in this notice and an error in a CUSIP number as printed on such Bonds or as contained in this notice shall not affect the validity of the proceedings for redemption.
On [insert redemption date], the Bonds to be redeemed shall be surrendered for redemption to:

<table>
<thead>
<tr>
<th>FIRST CLASS/REGISTERED/CERTIFIED</th>
<th>EXPRESS DELIVERY ONLY</th>
<th>BY HAND ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>[_____]</td>
<td>[_____]</td>
<td>[_____]</td>
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<td>[_____]</td>
<td>[_____]</td>
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</tr>
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<td>[_____]</td>
<td>[_____]</td>
<td>[_____]</td>
</tr>
</tbody>
</table>

Any inquiries can be made by calling the Customer Service number [____].

The method of delivery of the Bonds to be redeemed is at the option and risk of the holder, but, if mail is used, registered mail, properly insured, with receipt requested, is recommended.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: [TRUSTEE], as Trustee

Dated: ______________, 20___
EXHIBIT E

[CONDITIONAL] NOTICE OF EXTRAORDINARY REDEMPTION OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY [ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

NOTICE IS HEREBY GIVEN to the holders of the following California Community Choice Financing Authority [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the "Bonds"), which were issued on [___________], 2021, that the Bonds listed below have been conditionally called for redemption prior to maturity on ______________, 20[___] (the "Redemption Date"), at a redemption price equal to (a) in the case of the Series 2021A Bonds, the Amortized Value of the Bonds as of the Redemption Date, plus accrued interest to the Redemption Date, and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the "Redemption Price").

"Amortized Value" means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond’s original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Trust Indenture dated as of [___________] 1, 2021; provided that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.

<table>
<thead>
<tr>
<th>CUSIP NUMBER</th>
<th>MATURITY DATE</th>
<th>INTEREST RATE</th>
<th>OUTSTANDING PRINCIPAL AMOUNT</th>
<th>PRINCIPAL AMOUNT TO BE REDEEMED</th>
<th>REDEMPTION DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>%</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

On the Redemption Date, there shall become due and payable on the Bond to be redeemed, upon presentation and surrender of such Bonds as set forth below, the above mentioned Redemption Price, together with interest accrued and unpaid on the Bonds to be redeemed to such Redemption Date and, if payment has been made as provided for, then interest on the Bonds to be redeemed shall cease to accrue from and after the Redemption Date.

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1 No representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in this notice and an error in a CUSIP number as printed on such Bonds or as contained in this notice shall not affect the validity of the proceedings for redemption.
[Note: The following paragraph is to be used only if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, Issuer HAS entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds on such Mandatory Purchase Date.]

[The Redemption Date is also a Mandatory Purchase Date under the Indenture. The redemption of the Bonds is subject to the condition that the Trustee has not received, by noon New York City time on the fifth Business Day preceding the Redemption Date, the Purchase Price of the Bonds required to be purchased on the Redemption Date. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding the Redemption Date, the Trustee shall withdraw this conditional notice of redemption and the Bonds shall be purchased pursuant to Section 4.14 of the Indenture on the Redemption Date rather than redeemed.]

On [insert redemption date], the Bonds to be redeemed shall be surrendered for redemption to:

FIRST CLASS/REGISTERED/CERTIFIED EXPRESS DELIVERY ONLY BY HAND ONLY

[_____] [_____] [_____]
[_____] [_____] [_____]
[_____] [_____] [_____]
[_____] [_____] [_____]

Any inquiries can be made by calling the Customer Service number [____].

The method of delivery of the Bonds to be redeemed is at the option and risk of the holder, but, if mail is used, registered mail, properly insured, with receipt requested, is recommended.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By: [TRUSTEE], as Trustee

Dated: ____________, 20[___]
SCHEDULE I

INITIAL PROJECT PARTICIPANTS

East Bay Community Energy
Silicon Valley Clean Energy
# Schedule II

## Scheduled Debt Service Deposits

<table>
<thead>
<tr>
<th>Date</th>
<th>Scheduled Monthly Deposit</th>
<th>Minimum Interest Earnings Accrual&lt;sup&gt;(1)&lt;/sup&gt;</th>
<th>Cumulative Scheduled Balance</th>
</tr>
</thead>
</table>

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<sup>(1)</sup> Excludes projected interest earnings on the ISDA Agreement with Morgan Stanley Capital Group Inc.
SCHEDULE III

TERMS OF COMMODITY SWAPS

For each Month beginning with [___] and ending with [___], Issuer will determine for each “Primary Delivery Point” as set forth on Exhibit A to the Energy Purchase Agreement, (i) the price under the “Contract Index Price” (as set forth on such Exhibit A), (ii) the difference (which may be positive or negative) between such Contract Index Price and the fixed prices for Energy set forth in the Commodity Swap, and (iii) the product of such difference and the Energy quantity, as applicable, for such Primary Delivery Point as set forth on Exhibit A to the Energy Purchase Agreement.

Issuer will then calculate a net settlement amount for all Primary Delivery Points for such Month due by or to Issuer under the Commodity Swap that aggregates the amounts determined under clause (iii) above.

All payments from Issuer or the Commodity Swap Counterparty will be due on each “Payment Date” under the Commodity Swap (which shall be the twenty-fifth day of the Month following the Month of Energy deliveries or, if such day is not a Business Day under the Commodity Swap, then the next following Business Day).
**SCHEDULE IV**

**AMORTIZED VALUE OF SERIES 2021A BONDS**

<table>
<thead>
<tr>
<th>DATE</th>
<th>AMORTIZED VALUE</th>
<th>DATE</th>
<th>AMORTIZED VALUE</th>
</tr>
</thead>
</table>

Draft Trust Indenture
RE-PRICING AGREEMENT

This RE-PRICING AGREEMENT, dated as of [____], 2021 (this “Agreement”), is entered into by and between Morgan Stanley Energy Structuring, L.L.C. (“MSES”) and [____] (“Issuer”). MSES and Issuer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms used herein shall have the meanings set forth in Section 1.

WHEREAS, Issuer is issuing the [Series 2021A] Bonds pursuant to the Indenture in order to provide funds to acquire the Energy Supply from MSES pursuant to the Prepaid Agreement; and

WHEREAS, in connection with its acquisition of the Energy Supply, Issuer has entered into Power Supply Contracts with the Project Participants providing for the sale of the Energy Supply by Issuer to the Project Participants; and

WHEREAS, the price payable by the Project Participants for the Energy Supply includes a discount to the index price set forth in the applicable Power Supply Contract, which discount has been established for the Initial Reset Period therein and will be re-established for each subsequent Reset Period under the terms and conditions set forth herein; and

WHEREAS, under the terms of the Power Supply Contract, prior to each Reset Period after the Initial Reset Period, each Project Participant may elect to have its Energy Supply remarketed if the Available Discount established for such Reset Period is less than the Minimum Discount specified in the Power Supply Contract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions. When used herein, the following capitalized terms shall have the following meanings:

“Additional Reduction Amount” has the meaning set forth in Appendix A.

“Alternative Supplier” means any Person that (i) has a Credit Rating equal to or better than Morgan Stanley’s Credit Rating and (ii) agrees that, if the Prepaid Agreement and other related agreements entered into by Prepaid Supplier (the “Prepaid Supplier Documents”) are novated to it, it will deliver an opinion or opinions of counsel in a form acceptable to Issuer, Bond Counsel (as defined in the Bond Indenture) and Swap Counterparty (as defined in the Prepaid Contract) that each of the Prepaid Supplier Documents are duly authorized by and enforceable against it.

[“Available Discount” has the meaning specified in the Power Supply Contracts] and also means, for each Reset Period, the final amount determined by MSES as of the applicable Bond Pricing Date pursuant to Appendix A, expressed in cents per MWh (rounded down to the nearest one-half cent).
“Bond Closing Date” means the date on which the Bonds are issued pursuant to the Indenture.

“Bond Pricing Date” means, for any Reset Period, the date upon which the interest rate and yield on the Bonds is established pursuant to the applicable bond remarketing agreement or bond purchase agreement.

[“Bonds” has the meaning set forth in the Indenture.]

[“Business Day” has the meaning set forth in the Indenture.]

[“Contract Quantity” has the meaning set forth in the Prepaid Agreement.]

“Credit Rating” means the credit rating assigned by of Moody’s Investors Service, Inc. and Fitch Ratings, Inc. (and any successors thereto) to a Person’s senior, unsecured long-term debt obligations (not supported by third party credit enhancements).

[“Delivery Period” has the meaning set forth in the Prepaid Agreement.]

“Delivery Period Implied Rate” has the meaning set forth in Appendix A.

“Determination Month” has the meaning set forth in Appendix A.

[“Energy” has the meaning set forth in the Prepaid Agreement.]

“Energy Supply” means with respect to the Prepaid Agreement, the aggregate Contract Quantities of Energy to be delivered by MSES under the Prepaid Agreement.

“Estimated Available Discount” has the meaning set forth in Section 5(a).

“Excess Amount” is the positive difference, if any, of the Prior Remaining Energy Value less the New Remaining Delivery Cost.

“Fixed Rate” has the meaning set forth in Appendix A.

“Guarantor” means Morgan Stanley, a Delaware corporation, in its capacity as the guarantor of MSES’s payment obligations under the Prepaid Agreement.

“Indenture” means the Trust Indenture, dated as of the first day of the month of the Bond Closing Date, between Issuer and the Trustee, as the same may be amended or supplemented from time to time pursuant to one or more Supplemental Indentures, or any other trust indenture under which refunding bonds are issued and secured.

“Initial Reset Period” means the period from [____], 2021 – [_____], 20[____].

[“Interest Rate Period” has the meaning set forth in the Indenture, provided that if the Bonds are Outstanding in two or more Series with separate, concurrent and co-terminus Interest Rate Periods, “Interest Rate Period” shall mean all such Interest Rate Periods collectively].

Draft Repricing Agreement
[“Mandatory Purchase Date” has the meaning set forth in the Indenture.]

[“Minimum Discount” has the meaning set forth in the Power Supply Contracts.]

“Monthly Contract Quantity” means, for any month, the aggregate Contract Quantities scheduled to be delivered by MSES to Issuer under the Prepaid Agreement for such month.

“Monthly Discount” has the meaning set forth in Section 6(b).

[“Morgan Stanley Guaranty” has the meaning set forth in the Prepaid Agreement.]

“MSES” has the meaning set forth in the preamble.

“MWh” means megawatt-hour.

“New Remaining Delivery Cost” has the meaning set forth in Appendix A.

“New Reset Period” has the meaning set forth in Appendix A.

“Old Reset Period” has the meaning set forth in Appendix A.

[“Outstanding” has the meaning set forth in the Indenture.]

“Participant Notification Deadline Day” means, with respect to each Reset Period, the last day on which Issuer is permitted to provide a notice of the Estimated Available Discount to Project Participants under the Power Supply Contracts.

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or government agency.

“Prepaid Agreement” means the Prepaid Energy Sales Agreement, dated as of [____], 2021, between MSES and Issuer, as the same may be amended or supplemented in accordance with its terms.

“Prepaid Supplier Documents” has the meaning specified in the definition of Alternative Supplier.

“Prior Remaining Energy Value” has the meaning set forth in Appendix A.

[“Project Participant” has the meaning set forth in the Indenture.]

“Power Supply Contract” means, individually or collectively, any or all of the separate Energy Supply Agreements, relating to the [Energy Project as defined in the Indenture], between Issuer and a Project Participant, as each may be amended from time to time.

“Re-pricing Date” means, for any Reset Period, any Business Day not earlier than ninety (90) days prior to the earlier of (i) the date on which the Bonds then Outstanding may be called for optional redemption in accordance with the Indenture and (ii) the day following the last day of the Reset Period then in effect.
“Remaining Delivery Cost” has the meaning set forth in Appendix A.

“Remaining Energy Value” has the meaning set forth in Appendix A.

“Reset Period” means the Initial Reset Period and each period determined pursuant to Section 3.

“Reset Period Implied Rate” has the meaning set forth in Appendix A.

“Series” means Bonds designated as a Series and authorized to be issued by Issuer pursuant to [Section 2.01 of the Indenture].

[“Series 2021A Bonds” has the meaning set forth in the Indenture.]

“SOFR” means the Secured Overnight Financing Rate administered by the Federal Reserve Bank of New York (or a successor administrator) and provided on the New York Fed’s Website.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture executed and delivered by Issuer and the Trustee in accordance with [Article X of the Indenture].

[“Termination Payment” has the meaning set forth in the Prepaid Agreement.]

[“Termination Payment Adjustment Schedule” has the meaning set forth in the Prepaid Agreement.]

“Trustee” means the trustee under the Indenture and its successors and assigns.

Section 2. Purpose of Agreement and Intention of Parties. The Parties are entering into this Agreement in connection with the execution and delivery of the Indenture, the Prepaid Agreement and the other transaction documents for the purpose of establishing the methodology for determining the Available Discount for each Reset Period following the Initial Reset Period.

Section 3. Reset Periods. Each Reset Period shall commence on the next day that follows the last day of the Initial Reset Period or, subsequently, the immediately prior Reset Period. The length of each Reset Period shall be the remaining term of the Delivery Period unless MSES elects, in its sole discretion following consultation with Issuer, a shorter period, which period may not be shorter than the lesser of (a) three (3) years or (b) the remaining term of the Delivery Period without Issuer’s consent; provided further that:

(i) The Initial Reset Period and each subsequent Reset Period (other than the final Reset Period) shall end the last day of the month preceding the end of the applicable Interest Rate Period. For example, if the Interest Rate Period ends October 31, the last day of the Reset Period would end September 30, and

(ii) the final Reset Period shall end on the last day of the Delivery Period.
Section 4. **Morgan Stanley Guaranty.** The Morgan Stanley Guaranty terminates on the earliest of (i) the end of the Delivery Period; (ii) the earlier termination of the Prepaid Agreement (including through the date of any Termination Payment thereunder); and (iii) the last day of any Reset Period, if the Guarantor provides written notice of termination of the Morgan Stanley Guaranty. Unless the Morgan Stanley Guaranty is terminated, the Morgan Stanley Guaranty shall remain in effect for the next Reset Period at the time of, or prior to, the delivery of any refunding or remarketing bonds.

Section 5. **Estimated Available Discount; Alternative Suppliers.**

(a) **Initial Estimated Available Discount.**

(i) **Initial Estimate by MSES.** Not later than (A) eight months prior to a Mandatory Purchase Date that occurs in February, May, August or November and (B) seven months prior a Mandatory Purchase Date that occurs in any other month, MSES will provide an estimate of the length of such Reset Period, the Reset Period Implied Rate, the difference between the Reset Period Implied Rate and SOFR for such period and the Available Discount (the “Estimated Available Discount”) that are anticipated to apply to such Reset Period. In determining the Estimated Available Discount, MSES shall utilize the methodology set forth in Appendix A. After providing an initial estimate, MSES may provide updated estimates on its own initiative or upon a subsequent request from Issuer.

(ii) **Cooperation by MSES.** MSES acknowledges that Issuer will consult with its financial advisor in connection with the establishment of each Reset Period, and MSES agrees that it will reasonably cooperate with Issuer and its financial advisor in connection therewith consistent with the manner in which it has cooperated with Issuer and its financial advisor in connection with the establishment of the pricing for the Initial Reset Period.

(b) **Alternative Estimated Available Discounts; Achievement of Bond Pricing Date.**

(i) **Estimates from Alternative Suppliers.** Only after having received the Estimated Available Discount from MSES, Issuer may at its discretion solicit Alternative Suppliers to provide Estimated Available Discounts for such Reset Period. Not later than (A) 165 days prior to a Mandatory Purchase Date that occurs in February, May, August or November and (B) 135 days prior to a Mandatory Purchase Date that occurs in any other month, Issuer may notify MSES that an Alternative Supplier has provided an Estimated Available Discount that materially exceeds MSES’s previously provided Estimated Discount Rate (an “Alternative Estimated Available Discount”), which notice must include (1) the identity of the Alternative Supplier, (2) the Alternative Estimated Available Discount, and (3) certification by Issuer’s financial advisor of a reasonable expectation of the Alternative Supplier’s ability to deliver such a proposed Estimated Alternative Discount based on then-current market conditions and to achieve a successful Bond closing for such upcoming Reset Period.
(ii) **MSES Option to Match Alternative Estimated Available Discount.** Within 15 days of receiving notice of an Alternative Estimated Available Discount meeting the foregoing requirements, MSES will notify Issuer if Guarantor could, based on then-current market conditions, match the Alternative Estimated Available Discount. If MSES so notifies Issuer, MSES will thereafter exercise commercially reasonable efforts to meet or exceed the Alternative Estimated Alternative Discount as of the Bond Pricing Date for the next Reset Period and Issuer will reasonably cooperate with MSES in connection therewith; provided that Issuer acknowledges the actual Available Discount will be determined on such Bond Pricing Date based on then-current market conditions but will remain subject to the Minimum Discount requirements.

(iii) **Conditional Novation to Alternative Supplier.** If MSES does not provide a notice of Guarantor’s ability to meet the Estimated Available Discount in accordance with the foregoing, then MSES shall cooperate with Issuer and the Alternative Supplier to cause the Prepaid Supplier Documents to be novated to the Alternative Supplier as of the first day of the next Reset Period, which novation must be conditionally binding not later than two months prior to the Mandatory Purchase Date, subject only to successful closing of the new Bonds. Following the execution of such novation documents, MSES and Guarantor will have no obligations under any transaction documents for the next Reset Period other than those obligations that would have existed had the Prepaid Agreement terminated at the end of the then-current Reset Period. In the event of a Failed Remarketing (as defined in the Indenture) by the Alternative Supplier, MSES, may at its option and if all parties are in agreement, elect to attempt to remarket the transaction if MSES deems there is sufficient time to do so prior to the Mandatory Purchase Date.

(c) **Notices to Project Participants.** Issuer shall notify each of the Project Participants of the Estimated Available Discount and any updates thereto under the relevant provisions of the Power Supply Contracts. Unless MSES and Issuer otherwise agree, in any notice of Estimated Available Discount provided to a Project Participant prior to the Participant Notification Deadline prior to the Participant Notification Day, Issuer shall clearly indicate in such notice that the notice is provisional and is not intended to, and does not, trigger a Project Participant’s right to provide a [Remarketing Election Notice (as defined in the Power Supply Contracts)].

Section 6. **Determination of Available Discount and Monthly Discount.**

(a) MSES shall determine on the Bond Pricing Date the Available Discount for such Reset Period (expressed in cents per MWh and rounded down to the nearest one-half cent) in accordance with the methodology set forth in Appendix A.

(b) For each Reset Period after the Initial Reset Period, MSES shall determine the monthly discount portion of the Available Discount for such Reset Period (the “Monthly Discount”). Issuer and MSES then shall mutually agree upon the projected [Annual Refund] (as defined in the Power Supply Contracts) for such Reset Period, which shall be determined consistent with [Section 4.5 of the Power Supply Contracts] and shall be the remaining portion of the Available Discount. MSES and Issuer acknowledge that the purpose of retaining a portion of
the Available Discount for distribution in the Annual Refund is to mitigate the risk to bondholders of reduced or lost investment income on any investments held under the Indenture.

Section 7. **Termination Payment Adjustment Schedule; Monthly Quantity Changes.**

(a) For any Reset Period, MSES may modify the Termination Payment Adjustment Schedule to reflect changes in the Remaining Energy Values set forth on Attachment 1 to Appendix A and otherwise, provided that such modifications are sufficient to meet the redemption requirements of the Bonds to be sold for such Reset Period.

(b) Issuer and MSES agree that the Prepaid Agreement will be amended to reflect any reductions to Monthly Contract Quantities determined pursuant to Appendix A.

Section 8. **Timing.** The dates and time intervals stated in this Agreement may be waived or altered by the mutual agreement of the Parties.

Section 9. **Termination.** This Agreement shall terminate automatically upon termination of the Prepaid Agreement for any reason, including but not limited to election by the Guarantor to terminate the Morgan Stanley Guaranty pursuant to its terms. For the avoidance of doubt, nothing in this Agreement or any other agreement restricts the ability of Guarantor to terminate the Morgan Stanley Guaranty as set forth in the Morgan Stanley Guaranty, effective as of the end of a Reset Period, which election to terminate may be made by Guarantor in its sole and absolute discretion. Any such termination shall not be considered a failure by MSES to act in good faith hereunder, regardless of whether the Parties have previously discussed pricing that may apply to any Reset Period or otherwise taken the steps required under this Agreement. MSES shall not be required to provide estimates hereunder or otherwise take or continue the steps toward determining pricing hereunder for any Reset Period if the Guarantor exercises its right to terminate the Morgan Stanley Guaranty.

Section 10. **Communications.**

(a) All notices, requests and other communications shall be in writing (including facsimile, electronic mail or other electronic means) provided to the address and/or electronic mail address set forth below:

- **MSES:** As provided in the Prepaid Agreement
- **Issuer:** As provided in the Prepaid Agreement

(b) Each Party may change the address for communications to it pursuant to the terms of the referenced agreement, which notice shall be effective when delivered at the address specified herein.

Section 11. **Miscellaneous.**

(a) **Miscellaneous.** Article X [Jurisdiction, Waiver of Jury Trial, Dispute Resolution] and Sections 18.3 [Entirety; Amendments], 18.4 [Governing Law], 18.5 [Non-Waiver], 18.6
[Severability], 18.7 [Exhibits], 18.9 [Relationship of Parties], 18.13 [Counterparts] of the Prepaid Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

(b) *Amendments to Power Supply Contracts and Indenture.* Issuer shall not agree to or consent to any modification, supplement, amendment or waiver of any provision of the Power Supply Contracts or the Indenture that affects the meaning of any defined term herein or the operation of any provision hereof.

(c) *Assignment.* This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party hereto without the prior written consent of the other Party; provided that each Party acknowledges and agrees that the other Party shall assign all of its right, title and interest in, to and under this Agreement in connection with any assignment by either Party of its right, title and interest in, to and under the Prepaid Agreement to the assignee thereof, which assignment shall constitute a novation.

*[Separate Signature Page(s) Attached]*
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first above written.

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: ____________________________
Name: __________________________
Title: __________________________

[_____]

By: ____________________________
Name: __________________________
Title: __________________________
Appendix A

MSES will undertake the following steps in determining the Available Discount for any Reset Period (each, a “New Reset Period”):

- **Step 1: Determine the “Prior Remaining Energy Value”**
  - MSES will determine the Remaining Energy Value for the last month of the current Reset Period (the “Old Reset Period”) based on Attachment 1 hereto, as such Attachment initially existed or was last updated at the beginning of the prior Reset Period (the “Prior Remaining Energy Value”).
  - “Remaining Energy Value” means, for any month, the amount set forth on Attachment 1 of Appendix A as the “Remaining Energy Value” for such month, as Attachment 1 may be updated pursuant to this Appendix A in connection with the establishment of any new Reset Period.

- **Step 2: MSES will specify the length of the New Reset Period pursuant to [Section 3 of the Agreement]**

- **Step 3: MSES will specify a Reset Period Implied Rate for the New Reset Period and a Delivery Period Implied Rate**
  - “Reset Period Implied Rate” means, for any Reset Period other than the Initial Reset Period, a fixed rate offered by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period at which MSES or Guarantor determines (in its sole discretion) that it would be able to acquire, as of the date of determination, funding from other sources comparable to the funding provided by the Prepaid Agreement as of the date of determination. In determining such a rate, the Guarantor and MSES may consider all relevant factors, including (x) the nature of the source of funding provided by the Prepaid Agreement, including any applicable regulatory or capital charges, (y) the tenor and possibility of early termination of the Prepaid Agreement, and (z) any other unique attributes of the Prepaid Agreement funding relative to other sources available to the Guarantor.
  - “Delivery Period Implied Rate” means, for any remaining portion of the Delivery Period that is not covered by a Reset Period, a fixed rate determined by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period which MSES or Guarantor determines (in its sole discretion) represents an appropriate taxable market discount rate as of the Bond Pricing Date.

- **Step 4: Determine the “New Remaining Delivery Cost”**
  - MSES will determine the “Remaining Delivery Cost” for each month of the Delivery Period after the Old Reset Period. The Remaining Delivery Cost for the first month of the New Reset Period is the “New Remaining Delivery Cost”.

Appendix A – Page 1

Draft Repricing Agreement
o “Remaining Delivery Cost” means, for the first month of any New Reset Period (the “Determination Month”), an amount calculated by MSES equal to the net present value of a stream of monthly payments equal to the Monthly Contract Quantities multiplied by the [Fixed Price (as defined in the Prepaid Agreement)] for the remainder of the Delivery Period (including such Determination Month), discounted at the Reset Period Implied Rate for the New Reset Period and the Delivery Period Implied Rate for the remainder of the Delivery Period after the New Reset Period.

- **Step 5: Additional Reduction Amount or changing Monthly Contract Quantities**
  - If the Prior Remaining Energy Value is less than the New Remaining Delivery Cost:
    - If the Reset Period will go to the end of the Delivery Period, MSES will reduce the Monthly Contract Quantities to zero in as many months as necessary at the end of the Delivery Period (and, to the extent necessary, reduce the Monthly Contract Quantities in the last remaining month of the Reset Period to a quantity greater than zero) such that the Prior Remaining Energy Value is equal to the New Remaining Delivery Cost.
    - If the Reset Period will end prior to the end of the Delivery Period, MSES in its sole discretion may reduce the Monthly Contract Quantities as provided above.
  - If the Prior Remaining Energy Value is greater than the New Remaining Delivery Cost:
    - Subject to the following bullet, MSES will pay to Issuer the amount, if any, by which (A) the Prior Remaining Energy Value exceeds (B) the New Remaining Delivery Cost (the “Additional Reduction Amount”) on the first day of the contemplated Interest Rate Period, which payment shall be applied by Issuer to the retirement of Bonds.
    - Notwithstanding the immediately prior bullet, MSES may elect to retain a portion of the Excess Amount if (i) the Reset Period will end prior to the end of the Delivery Period, (ii) such retention does not reduce the Available Discount, and (iii) doing so is consistent with the amortization requirement of the Bonds. If MSES elects to retain a portion of such Excess Amount pursuant to the foregoing proviso, the Additional Reduction Amount shall be the portion of such Excess Amount that MSES elects to pay.
  - Any Additional Reduction Amount or changes in Monthly Contract Quantities will then be included in calculating the New Remaining Delivery Cost. An Additional Reduction Amount will reduce the Prior Remaining Energy Value for this purpose.
  - Once the New Reset Period goes into effect, Attachment 1 hereto will be amended such that the Remaining Energy Value for each month in the New Reset Period and the remainder of the Delivery Period is equal to the
Remaining Delivery Cost for such month as determined under Step 4 and updated under this Step 5.

- **Step 6: Determine the Fixed Rate for the Bonds for the term of such contemplated Interest Rate Period**
  - The remarketing agent or underwriter of the Bonds for such contemplated Interest Rate Period will specify the Fixed Rate.
  - “Fixed Rate” means, for any New Reset Period, the fixed rate or rates of interest payable by Issuer with respect to a Series of Bonds or, in the case of a [Series of Variable Rate Bonds (as defined in the Indenture)], the fixed rate payable by Issuer under the related fixed rate swap transaction, which Fixed Rates will be determined on the Bond Pricing Date at a rate sufficient to enable all the Bonds to be sold or remarketed on such Bond Pricing Date in accordance with the Indenture (which sale price may include a premium or discount to par), as determined based on market information then available.

- **Step 7: Determine Monthly Discount Portion of Available Discount**
  - MSES will determine the Monthly Discount portion of the Available Discount for the Reset Period based on the expected differences between monthly revenues and monthly debt service and other obligations of the [Energy Project (as defined in the Indenture)].

- **Step 8: Determine Annual Refund Portion of Available Discount**
  - MSES and Issuer shall mutually agree upon the projected [Annual Refund] (as defined in the Power Supply Contracts) for the Reset Period, which shall be determined consistent with [Section 4.5 of the Power Supply Contracts] and shall be the remaining portion of the Available Discount.
Attachment 1 to Appendix A

Remaining Energy Values

(To be attached.)
PRELIMINARY OFFICIAL STATEMENT DATED _______________, 2021

NEW ISSUE - BOOK-ENTRY ONLY

RATING: (SEE “RATING” HEREIN)

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds. See “TAX MATTERS” herein.

[CCCFA LOGO] CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS ([PROJECT NO. 2])

$____________* SERIES 2021B-1 ($_________)
(FIXED RATE)

$____________ SERIES 2021B-2 ($_________)
(SIFMA INDEX RATE)

DATED: Date of Delivery

California Community Choice Financing Authority (“CCCFA”) is issuing its Clean Energy Project Revenue Bonds, Series 2021B (the “Bonds”), under a Trust Indenture between CCCFA and [________________], as Trustee. The Bonds will be issued in book-entry form through the facilities of The Depository Trust Company. Purchases of the Bonds will be made in book-entry form through DTC participants in denominations of $5,000 or any multiple thereof. Payments of principal, premium, if any, and interest on the Bonds will be made directly to DTC and will subsequently be disbursed to Beneficial Owners of the Bonds, all as described herein. Capitalized terms used and not otherwise defined on this cover page have the meanings set forth herein.

From their Initial Issue Date to and including [__________], 20[___] (the “Initial Interest Rate Period”), the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period and the Series 2021B-2 Bonds will bear interest in a SIFMA Index Rate Period, all as shown on the inside cover page and as described herein. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds is payable semiannually on each [_____] 1 and [_____] 1, commencing [_____] 1, 20[___] and interest on the Series 2021B-2 Bonds is payable on the first Business Day of each month, commencing on the first Business Day of [_____] 20[___]. The Bonds are subject to optional and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds of each Series maturing on [_____] 1, 20[___] are subject to mandatory tender for purchase on [______], 20[___] (the “Mandatory Purchase Date”).

Proceeds of the Bonds will be used to prepay the costs of the acquisition of EPS Compliant Energy to be delivered over approximately 30 years under a Prepaid Energy Sales Agreement (the “Prepaid Energy Sales Agreement”), between Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (“MSES” or the “Energy Supplier”) and CCCFA. “EPS Compliant Energy” means three-phase, 60-cycle alternating current electric energy (“Energy”) that a Project Participant (hereinafter defined) can contract for and purchase in compliance with the California’s Emissions Performance Standards (“EPS”), as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law, that are applicable to such Project Participant Pursuant to the Prepaid Energy Sales Agreement, MSES is obligated to deliver specified quantities of EPS Compliant Energy to CCCFA (the “Prepaid Energy”), and make certain payments for any Prepaid Energy not delivered, remeasured quantities of Base Energy (defined herein) in respect of Prepaid Energy not taken by the Project Participants and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, are unconditionally guaranteed by Morgan Stanley, a Delaware corporation (“Morgan Stanley.”).

CCCFA will sell all of the Prepaid Energy acquired under the Prepaid Energy Sales Agreement to East Bay Community Energy Authority (“EBCE”) and Silicon Valley Clean Energy Authority (“SVCE” and, together with EBCE, the “Project Participants”) under separate Power Supply Contracts (each a “Power Supply Contract” and collectively the “Power Supply Contracts”). Under the terms of the Prepaid Energy Sales Agreement and the Power Supply Contracts, each Project Participant may assign its rights to the delivery of EPS Compliant Energy under existing and future power purchase agreements to Morgan Stanley Capital Group, Inc. ("MSCG") for ultimate delivery of such EPS Compliant Energy from such agreements to such Project Participant. Each Project Participant has entered into a limited assignment agreement relating to specific power purchase agreement(s) as of the Date of Delivery.


This Official Statement describes the Bonds only during the Initial Interest Rate Period and must not be relied upon if the Bonds are converted to any other interest rate period. The purchase and ownership of the Bonds involve investment risk and may not be suitable for all investors. This cover page is not intended to be a summary of the terms of or the security for the Bonds. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision with respect to the Bonds, giving particular attention to the matters discussed under “INVESTMENT CONSIDERATIONS” herein.

* Preliminary, subject to change.

Draft Preliminary Offering Statement
The Bonds are offered, when, as and if issued by CCCFA and accepted by the Underwriter, subject to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CCCFA by Orrick, Herrington & Sutcliffe LLP; for the Project Participants by Chapman and Cutler LLP; for the Energy Supplier by Haynes and Boone, LLP; and for the Underwriter by Nixon Peabody LLP. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about [__________], 2021.

Morgan Stanley

This Official Statement is dated April 20, 2021.
$_________ *  
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY  
CLEAN ENERGY PROJECT REVENUE BONDS [PROJECT NO. 2]]

Maturity Dates, Principal Amounts, Interest Rates, Yields and CUSIP Numbers

$_________ Series 2021B-1 Bonds  
(Fixed Rate)

$_________ Serial Bonds

<table>
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<tr>
<th>Maturity Date</th>
<th>Principal Amount</th>
<th>Interest Rate</th>
<th>Yield</th>
<th>CUSIP</th>
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$_________ ___% Term Bond due _____ 1, 20__, Yield: ____%, CUSIP _______

$_________ Series 2021B-2 Bonds  
(SIFMA Index Rate)

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* Preliminary; subject to change.

CUSIP® is a registered trademark of the American Bankers Association. The CUSIP numbers listed above have been provided by CUSIP Global Services, and are included solely for the convenience of bondholders only. CCCFA and the Underwriter make no representation with respect to such numbers or undertake any responsibility for their accuracy. The CUSIP numbers are subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to a refunding in whole or in part of the Bonds.

The Bonds of each Series maturing on _____ 1, 20__ are required to be tendered for purchase on _____ 1, 20__.

With respect to the Series 2021B-2 Bonds, the Applicable Spread means the margin added to the SIFMA Municipal Swap Index to determine the SIFMA Index Rate. The Applicable Spread will remain constant for the duration of the initial SIFMA Index Rate Period. See “THE BONDS – Series 2021B-2 Bonds” herein.
The information contained in this Official Statement has been obtained from CCCFA, the Project Participants, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparties, DTC and other sources believed to be reliable. This Official Statement is submitted in connection with the sale of the securities described herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement speaks only as of its date and the information contained in this Official Statement is subject to change without notice and neither the delivery of this Official Statement nor any sale made by means of it shall, under any circumstances, create any implication that there have not been changes in the affairs of any party since the date of this Official Statement.

No broker, dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such information or representations must not be relied upon as having been authorized by CCCFA or the Underwriter. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

The Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state, municipal or other government entity or agency has or will have passed upon the adequacy of this Official Statement or, except for CCCFA, approved the Bonds for sale.

In making an investment decision, investors must rely on their own examination of the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. No commission or authority has confirmed the accuracy or determined the adequacy of this document.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE MARKET PRICES OF THE BONDS. SUCH TRANSACTIONS, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12 of the United States Securities and Exchange Commission.

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements are generally identifiable by the terminology used, such as “plan,” “project,” “expect,” “anticipate,” “intend,” “believe,” “estimate,” “budget” or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. CCCFA does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

1125 TAMALPAIS AVENUE
SAN RAFAEL, CA 94901
(____) ____-____

BOARD OF DIRECTORS

Nick Chaset, Chair
Girish Balachandran, Vice Chair
Garth Salisbury, Member
Tom Habashi, Member

MANAGEMENT

Garth Salisbury, Treasurer-Controller
Michael Callahan, General Counsel

MEMBERS

Marin Clean Energy
Central Coast Community Energy
East Bay Community Energy Authority
Silicon Valley Clean Energy Authority

PROJECT PARTICIPANTS

East Bay Community Energy Authority
Silicon Valley Clean Energy Authority

BOND COUNSEL
ORRICK HERRINGTON & SUTCLIFFE LLP

PROJECT PARTICIPANTS’ COUNSEL
CHAPMAN AND CUTLER LLP

TRUSTEE
[____________________]

FINANCIAL ADVISOR
PUBLIC FINANCIAL MANAGEMENT, INC.
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(iii)
OFFICIAL STATEMENT

$[____________]

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

CLEAN ENERGY PROJECT REVENUE BONDS

SERIES 2021B

INTRODUCTION

This Official Statement, which includes the cover page and appendices attached hereto, contains information concerning (a) California Community Choice Financing Authority ("CCCFA"), (b) CCCFA’s Clean Energy Project Revenue Bonds, Series 2021B (the “Bonds”), being issued in the aggregate principal amount of $____________ * and (c) the Clean Energy Project (defined below) being financed with proceeds of the Bonds. Capitalized terms used herein have the meanings shown in APPENDIX B.

California Community Choice Financing Authority

California Community Choice Financing Authority is a joint powers agency formed by the Project Participants, Marin Clean Energy, and Central Coast Community Energy, each a community choice aggregator organized and existing under the laws of the State of California (the “State”). CCCFA is organized and existing pursuant to the laws of the State with the power to issue the Bonds and enter into the transaction documents described herein. CCCFA is authorized to undertake all actions permitted by Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”), including the purchase of the Energy in connection with the Clean Energy Project, and the sale thereof to the Project Participants. See “CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY” and “COMMUNITY CHOICE AGGREGATORS” herein.

The Bonds

The Bonds will be issued in two separate Series:

(a) $___________ Clean Energy Project Revenue Bonds [(Project No. 2)], Series 2021B-1 (Fixed Rate) (the “Series 2021B-1 Bonds”), and

(b) $___________ Clean Energy Project Revenue Bonds [(Project No. 2)], Series 2021B-2 (SIFMA Index Rate) (the “Series 2021B-2 Bonds”).

The Series 2021B-2 Bonds are sometimes referred to herein as the “Index Rate Bonds.”

From their Initial Issue Date to and including ______________ * (the “Initial Interest Rate Period”):

(a) the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period, with interest payable semiannually on each _________ 1 and _________ 1, commencing _________ 1, 2021*, and ____________

* Preliminary; subject to change.
(b) the Series 2021B-2 Bonds will bear interest at the SIFMA Index Rate in a SIFMA Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of _____ 2021*,

all as shown on the inside cover page and as described herein. See “THE BONDS.”

The Bonds are subject to optional redemption and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds maturing on________________ are required to be tendered for purchase on ________________ * (the “Mandatory Purchase Date”), which is the day following the end of the Initial Interest Rate Period. The Purchase Price of Bonds on the Mandatory Purchase Date is equal to the principal amount thereof and is payable in immediately available funds. Under the Indenture, a “Failed Remarketing” will occur if (a) there is a failure on the Mandatory Purchase Date to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem the Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) either (i) on the last day of the second calendar month preceding the Mandatory Purchase Date (i.e., the last day of the Initial Reset Period described below), CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) the conditions described in (b)(i) are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered into the Trust Estate by 12:00 noon, New York City time, on the fifth business day preceding the Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. See “THE BONDS—Redemption” and “—Tender—Mandatory Tender.”

Security for the Bonds

The Bonds are issued pursuant to the authority contained in the Act and are issued and secured under a Trust Indenture, to be dated as of the first day of the month in which the Bonds are issued (the “Indenture”), between CCCFA and [_______________], as trustee (the “Trustee”). The Bonds are special and limited obligations of CCCFA, are payable solely from and secured solely by the Trust Estate pledged by the Indenture and are expected to be paid from the Revenues of the Clean Energy Project.

The Bonds and the Interest Rate Swap are secured by a pledge of and lien on the Trust Estate established by the Indenture, which (among other things) includes CCCFA’s rights under the Power Supply Contracts, the Revenues, any Termination Payment payable by the Energy Supplier under the Prepaid Energy Sales Agreement, CCCFA’s rights under the Receivables Purchase Provisions and the Pledged Funds. The pledge of and lien on the Trust Estate in favor of the Bonds is subject to certain provisions of the Indenture. The Bonds are expected to be paid from the Revenues which (among other things) include the revenues received by CCCFA from the sale of Prepaid Energy under the Power Supply Contracts, Commodity Swap Receipts received under the CCCFA Commodity Swap and interest earnings on certain of the Funds and Accounts established by the Indenture. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Clean Energy Project. The Indenture includes provisions for the application of various other amounts under Clean Energy Project that do not constitute Revenues.

* Preliminary; subject to change.
Among other funds and accounts, the Indenture establishes a Revenue Fund, an Operating Fund, a Debt Service Account in the Debt Service Fund and a Commodity Swap Payment Fund and establishes the funding requirements therefor. Scheduled Debt Service Deposits are required to be made into the Debt Service Account and will be invested pursuant to the Debt Service Account Investment Agreement described herein. See “Security for the Bonds—Investment of Funds.”

The amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Purchase Price or the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that MSES, or in the event of nonpayment by MSES, payment by Morgan Stanley pursuant to the Morgan Stanley Guarantees, and the Investment Agreement Provider pay and perform their respective contract obligations when due. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture. See “Investment Considerations” herein.

The Bonds do not constitute general obligations or indebtedness of CCCFA, the Members of CCCFA, the State, any political subdivision, municipality, city or town of the State, or any Project Participant. The Bonds are special, limited obligations of CCCFA payable solely from and secured solely by a lien on the Trust Estate, in the manner and to the extent provided for in the Indenture. CCCFA has no taxing power. See “Security for the Bonds.”

The Clean Energy Project

CCCFA is issuing the Bonds to finance the cost of acquisition of an approximately 30-year supply of EPS Compliant Energy (the “Prepaid Energy”) under a Prepaid Energy Sales Agreement between CCCFA and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the “Energy Supplier” or “MSES”). The term “EPS Compliant Energy” means three-phase, 60-cycle alternating current electric energy (“Energy”) that a Project Participant can contract for and purchase in compliance with the California’s Emissions Performance Standards (“EPS”), as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor law, that are applicable to such Project Participant. Pursuant to the Prepaid Energy Sales Agreement, the Energy Supplier is obligated to deliver specified quantities of Prepaid Energy to CCCFA each month (the “Prepaid Quantities”), make certain payments for any Prepaid Quantities not delivered, remarket Prepaid Quantities not taken by the Project Participants and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, are unconditionally guaranteed by Morgan Stanley (“Morgan Stanley”). For a summary of certain terms and provisions of the Prepaid Energy Sales Agreement, see “The Prepaid Energy Sales Agreement.”

CCCFA has entered into Power Supply Contracts (each a “Power Supply Contract” and collectively the “Power Supply Contracts”) for the sale of the Prepaid Energy with East Bay Community Energy Authority (“EBCE”) and Silicon Valley Clean Energy Authority (“SVCE”), each a joint powers authority and a community choice aggregator duly organized and existing under the laws of the State of California (each a “Project Participant” and collectively the “Project Participants”). During the Delivery
Period, each Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. Under the terms of the Prepaid Energy Sales Agreement and each Power Supply Contract, each Project Participant may assign its right to receive quantities of EPS Compliant Energy equal to the Prepaid Quantities under existing and future power purchase agreements (“Assigned Quantities”) to Morgan Stanley Capital Group, Inc. (“MSCG”) for ultimate redelivery of such Assigned Quantities, together with Green Attributes (as defined in APPENDIX B hereto), renewable energy credits (“RECs”), capacity, or other related products (collectively, “Assigned Product”) from such agreements to such Project Participant. Each Project Participant has entered into a limited assignment agreement relating to [a] specific power purchase agreement(s) as of the Date of Delivery. For a summary of certain terms and provisions of the Power Sales Contracts, see “THE POWER SALES CONTRACTS.” See APPENDIX A for certain operating and financial information with respect to the Project Participants.

The acquisition of the approximately thirty-year supply of Prepaid Energy by CCCFA under the Prepaid Energy Sales Agreement and the sale of such Prepaid Energy to the Project Participants under the Power Supply Contracts is referred to herein as the “Clean Energy Project.”

Assignment of Power Purchase Agreements by the Project Participants

Right to Assign Existing and Future Power Purchase Agreements. The Clean Energy Project is structured to assist the Project Participants to procure a long-term supply of EPS Compliant Energy at attractive prices. In order to do so, the Clean Energy Project includes a feature whereby a Project Participant may assign a portion of its rights and obligations (the “Assigned Rights and Obligations”) under existing and future power purchase agreements (“PPAs”) to MSCG to meet the Energy Supplier’s obligations to deliver Prepaid Energy under the Prepaid Energy Sales Agreement (“Assigned Prepaid Energy”). CCCFA will then deliver such Assigned Energy to such Project Participant under its Power Supply Contract. Concurrent with the execution of the Prepaid Energy Sales Agreement and the Power Supply Contracts, each Project Participant has entered into a limited assignment agreement (each, an “Assignment Agreement”) relating to one or more specific PPAs (each an “Initially Assigned PPAs” and collectively the “Initially Assigned PPA”) among such Project Participant, MSCG and the seller under the applicable PPA (a “PPA Seller”) to assign the Energy from the Assigned Rights and Obligations (the “Assigned Energy”) to MSCG beginning [_______], 20[22]. MSCG will redeliver the Assigned Energy to the Energy Supplier pursuant to an Energy Management Agreement between them.

In the event of termination of the Prepaid Energy Sales Agreement, the rights, title and interest under the Assigned PPAs will revert back to the Project Participants, who may continue to receive the EPS Compliant Energy delivered under such agreements at the price payable under the applicable Assigned PPA. In the event of a termination of an Assignment Agreement and the reversion of the related Assigned Rights and Obligations under an Assigned PPA to a Project Participant, no termination payment other than payment for delivered Prepaid Energy will be required to be made by CCCFA, the Energy Supplier or MSCG.

Summary of Transaction Documents

The Prepaid Energy Sales Agreement

General. During the Delivery Period, the Prepaid Energy Sales Agreement provides for the monthly delivery of the Prepaid Quantities of EPS Compliant Energy. To the extent the quantity of
Assigned Energy delivered under the Initially Assigned PPAs or any future Assigned PPA for any month is less than Prepaid Quantity for such month, and the Energy Supplier is otherwise unable to deliver EPS Compliant Energy in respect of such Prepaid Quantity, the Energy Supplier is required to deliver Firm (LD) Energy (i.e., Energy that is required to be delivered without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure) in respect of such quantity (“Base Energy”). Neither CCCFA nor the Energy Supplier will have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Energy, as further discussed under “The Prepaid Energy Sales Agreement — Assignment of Power Purchase Agreements” herein. The Energy Supplier is obligated to remarket Base Energy under the Prepaid Energy Sales Agreement and remit the proceeds thereof to CCCFA. The Energy Supplier is also obligated to make payments to CCCFA for Base Energy not delivered under the Prepaid Energy Sales Agreement, including for Force Majeure events.

Assignment of Power Purchase Agreements. Each of the Project Participants has assigned its Assigned Rights and Obligations under the Initially Assigned PPAs to MCG (the “Initial Assigned Rights and Obligations”), as described above. In the event of any expiration, termination or anticipated termination of the Initial Assigned Rights and Obligations, each Project Participant is required to use commercially reasonable efforts to assign replacement Assigned Rights and Obligations to MCG for delivery of Assigned Energy equal to or exceeding the Prepaid Quantities (“Replacement Assigned Rights and Obligations”). Assigned Rights and Obligations are expected to be in place for the entirety of the Initial Reset Period, and Base Energy is not expected to be delivered during the Initial Reset Period.

Energy Remarketing. The Energy Supplier must remarket any Base Energy required to be delivered under the Prepaid Energy Sales Agreement. In the event that the Energy Supplier is unable to remarket such Base Energy, it has agreed to purchase such Base Energy for its own account. The Energy Supplier is required to (a) enter all remarketing sales or purchases of Base Energy on a ledger system that tracks compliance with the requirements of the U.S. Treasury Regulations applicable to tax-exempt bonds that finance Prepaid Energy supplies, and (b) remEDIATE any non-complying sales (i.e., non-qualifying use sales and private business use sales) through “qualifying use” sales within two years.

Early Termination. Various termination events are specified in the Prepaid Energy Sales Agreement. Upon the occurrence of certain of these events, the Prepaid Energy Sales Agreement may be terminated by CCCFA or MSES, and upon the occurrence of certain other events including a Failed Remarketing, the Prepaid Energy Sales Agreement will terminate automatically. If the Prepaid Energy Sales Agreement is terminated, MSES will be required to pay a scheduled termination payment (the “Termination Payment”) to CCCFA. Any termination of the Prepaid Energy Sales Agreement will result in extraordinary mandatory redemption of the Bonds. The amount of the Termination Payment declines over time as MSES performs its Energy delivery obligations under the Prepaid Energy Sales Agreement.

The amount of the Termination Payment, together with the amounts required to be on deposit in certain funds and accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that the Energy Supplier pays and performs its contract obligations when due, or in the event of nonpayment by the Energy Supplier, payment by Morgan Stanley under the Morgan Stanley Guarantees. A payment shortfall from any one of these entities could result in a payment shortfall to Bondholders.

See “The Prepaid Energy Sales Agreement,” and “The Bonds — Redemption — Extraordinary Mandatory Redemption.” A schedule of the monthly Termination Payment during the initial
Reset Period under the Prepaid Energy Sales Agreement is attached as APPENDIX H. Upon an Early Termination of the Prepaid Energy Sales Agreement, the Assignment Agreements shall terminate, with no further payment due under the Trust Estate with respect to the Assigned PPAs.

The Receivables Purchase Provisions

The Prepaid Energy Sales Agreement contains provisions (the “Receivables Purchase Provisions”) designed to mitigate the risk of non-payment by the Project Participants under the Power Supply Contracts. Upon a payment default by either of the Project Participants, the Receivables Purchase Provisions require CCCFA to put, and require MSES, as Receivables Purchaser, to purchase the amount owed by the defaulting Project Participant (the “Put Receivables”) with a face value up to the Maximum Monthly Amount with respect to each Project Participant. The “Maximum Monthly Amount” with respect to each Project Participant is sufficient to pay such Project Participant’s proportional share of (a) the greatest Scheduled Debt Service Deposits that CCCFA is required to make in any two consecutive months and (b) the projected maximum amount of Commodity Swap Payments that CCCFA would be required to pay in any two consecutive months, assuming a Contract Price under the Power Supply Contracts of $___ per MWh. Amounts received by the Trustee from the sale of Put Receivables will be deposited into the Revenue Fund and applied in accordance with the priorities established under the Indenture. See “SECURITY FOR THE BONDS—Flow of Funds.”

The Receivables Purchase Provisions also grant the Energy Supplier the right, but not the obligation, to purchase from CCCFA certain additional receivables relating to non-payment by the Project Participants in an amount sufficient to cause the amounts on deposit in the Commodity Swap Payment Fund to be sufficient to make the next succeeding payment due by CCCFA under the CCCFA Commodity Swap (the “Call Receivables”).

See “THE PREPAID ENERGY SALES AGREEMENT—Receivables Purchase Provisions.”

Morgan Stanley Guarantees

The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under a guarantee agreement (the “Morgan Stanley Guarantee”). The payment obligations of MSES under the the Energy Supplier Commodity Swap are unconditionally guaranteed by Morgan Stanley under a separate guarantee agreement (the “Morgan Stanley Commodity Swap Guarantee”). The Morgan Stanley Guarantee and the Morgan Stanley Commodity Swap Guarantee are referred to collectively herein as the “Morgan Stanley Guarantees.” See “THE CLEAN ENERGY PROJECT—Morgan Stanley Guarantees” and “THE PREPAID ENERGY SALES AGREEMENT—Security.”

The Power Supply Contracts

The Power Supply Contracts provide for the sale to the Project Participants of the Prepaid Energy to be delivered to CCCFA over the term of the Prepaid Energy Sales Agreement. Such Prepaid Energy will be comprised of the Assigned Quantities under Assigned PPAs and, to the extent such Assigned Quantities are less than the Prepaid Quantities for any month and MSES is otherwise unable to deliver make-up quantities of EPS Compliant Energy, Base Energy. Under the Power Supply Contracts, CCCFA has agreed
to deliver, and the Project Participants have agreed to purchase, such Assigned Quantities and to provide for the remarketing of any Base Energy during the Delivery Period.

The payments required to be made under the Power Supply Contracts constitute the primary and expected source of the Revenues pledged to the payment of the Bonds. The obligations of the Project Participants under the Power Supply Contracts are payable solely from revenues of the Project Participants derived from their respective community choice aggregator power supply operations.

If the actual quantity of Assigned Energy delivered is less than scheduled and the Energy Supplier is unable to deliver EPS Compliant Energy from other sources, the Energy Supplier is obligated to deliver Base Energy. Base Energy is required to be remarke ted under the Prepaid Energy Sales Agreement, subject to specific requirements. In the event that the Energy Supplier is unable to remarket any such Base Energy, the Energy Supplier has agreed to purchase such Base Energy for its own account.

Re-Pricing Agreement

On the Initial Issue Date of the Bonds, CCCFA and the Energy Supplier will enter into a Re-Pricing Agreement (the “Re-Pricing Agreement”), which provides for (a) the determination of Energy Delivery periods subsequent to the initial Delivery Period to correspond to the related Interest Rate Periods on the Bonds (“Reset Periods”) and (b) the determination of the amount of the discount (in US Dollars per MWh) to the Index Price that will be available for such Reset Period (the “Available Discount”) for sales to the Project Participants under the Power Supply Contracts during each Reset Period.

The initial Delivery Period under the Prepaid Energy Sales Agreement begins on the first day of __________ 20__ and ends on the last day of ________ 20__, and the first Reset Period is expected to begin on the first day of ________ 20__. In the event the Available Discount for any Reset Period is less than the Minimum Discount specified in the Power Supply Contracts, each Project Participant may elect not to take Energy during the Reset Period and to have the Energy remarke ted for the duration of the Reset Period (a “Remarketing Election”) by giving notice of such election to CCCFA.

Any Energy that is covered by a Remarketing Election will be remarke ted in accordance with the provisions of the Indenture and the Prepaid Energy Sales Agreement. Upon a Remarketing Election by a Project Participant, any Assignment Agreement with such Project Participant will terminate and the Assigned Rights and Obligations under the applicable Assigned PPA will revert to the related Project Participant.

In the event that both Project Participants make Remarketing Elections with respect to any Reset Period, the Energy Supplier will have the right, but not the obligation, to terminate the Prepaid Energy Sales Agreement. See “THE RE-PRICING AGREEMENT” and “THE PREPAID ENERGY SALES AGREEMENT — Remarketing” and “— Early Termination.”

Interest Rate Swap

With respect to any Index Rate Bonds that are issued, CCCFA will enter into an interest rate swap agreement (the “Interest Rate Swap”) with MSES, as Interest Rate Swap Counterparty, in order to hedge its exposure to interest rate fluctuations on the Index Rate Bonds and match its payment obligations on the
Index Rate Bonds with the expected Revenues of the Clean Energy Project. Under the Interest Rate Swap, CCCFA will pay amounts corresponding to the principal amount of the Index Rate Bonds at a fixed interest rate, and will receive from MSES amounts corresponding to the principal amount of the Index Rate Bonds at a floating rate equal to the interest rates on the Index Rate Bonds. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period. See “THE INTEREST RATE SWAP.”

Commodity Swaps

During the Initial EPS Energy Period, the Contract Price for Prepaid Energy delivered to the Project Participants will be a fixed price, and therefore payments of fixed and floating amounts under the Commodity Swaps described herein are not required to be made during the Initial EPS Energy Period. Thereafter, the Contract Price will revert to a floating price and such payments will be required to be made.

The swap counterparty is [Royal Bank of Canada]. See “THE COMMODITY SWAPS” and “THE COMMODITY SWAP COUNTERPARTY.”

The Energy Supplier, MSCG and Morgan Stanley

The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The Federal Energy Regulatory Commission (the “FERC”) has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services. Like all other Energy marketers, the Energy Supplier has blanket authorization to sell wholesale Energy at market-based rates. The Energy Supplier is not registered with the Commodity Futures Trading Commission (the “CFTC”) in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the Energy Supplier Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees.

MSCG is a direct, wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which is a direct, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC.

Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides its products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the United States, and its principal offices in London, Tokyo, Hong Kong and other world financial centers.

See “THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY,” and “THE PREPAID ENERGY SALES AGREEMENT—Security.”
Certain Relationships

MSES, which is the Energy Supplier and the Receivables Purchaser, and MSCG, which is assignee under the Assignment Agreements are indirect, wholly-owned subsidiaries of Morgan Stanley. The payment obligations of MSES under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap and the Interest Rate Swap, are unconditionally guaranteed by Morgan Stanley.

Morgan Stanley & Co. LLC (“MS&Co.”) is serving as the Underwriter of the Bonds. MS&Co. is a Delaware corporation (incorporated in 1969) and is a wholly-owned subsidiary of Morgan Stanley.

The relationships described above could create one or more conflicts of interest or the appearance of such conflicts.

This Official Statement includes information regarding and descriptions of CCCFA, the Clean Energy Project, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparties, the Project Participants and the Bonds, and summaries of certain provisions of the Indenture, the Power Supply Contracts, the Prepaid Energy Sales Agreement, the Commodity Swaps, the Receivables Purchase Provisions, the Re-Pricing Agreement, the Investment Agreements, the Interest Rate Swap and the Custodial Agreements referred to herein. Such descriptions and summaries do not purport to be complete or definitive, and such summaries are qualified by reference to such documents. Certain of these documents are available to prospective investors during the initial offering period of the Bonds and thereafter to Bondholders, in each case upon request to CCCFA. Descriptions of the Indenture, the Bonds, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Commodity Swaps, the Investment Agreements, the Interest Rate Swap, the Custodial Agreements, the Receivables Purchase Provisions and the Re-Pricing Agreement, and are qualified by reference to bankruptcy laws affecting the remedies for the enforcement of the rights and security provided therein and the effect of the exercise of police and regulatory powers by federal and state authorities.

This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after interest on the Bonds is converted to another Interest Rate Period.
**Clean Energy Project Transaction Structure**

**Transaction Overview**

1. **Bond Issuance**: CCCFA issues the Bonds to fund the prepayment for Energy, pay capitalized interest, and pay costs of issuance. The Bonds will bear interest at fixed interest rates during the Initial Interest Rate Period.

2. **Prepayment**: CCCFA will apply bond proceeds to prepay MSES for 30 years of Energy deliveries. Under the Prepaid Energy Sales Agreement, MSES will be obligated to (a) deliver specified hourly quantities of Energy each month to CCCFA for 30 years; (b) make payments for any [Base Energy of] Energy not delivered based on replacement cost or the index price, whichever is higher; and (c) make a termination payment upon any early termination of the Prepaid Energy Sales Agreement, including upon a Failed Remarketing, as described herein.

3. **MSES Commodity Swap**: MSES enters into a Commodity Swap with the Commodity Swap Counterparty to facilitate MSES’s ability to purchase at index prices the specified Energy quantities required to be delivered each month throughout the term of the Prepaid Energy Sales Agreement.

4. **Issuer Commodity Swap**: CCCFA enters into a Commodity Swap with the Commodity Swap Counterparty to facilitate its ability to sell specified Energy quantities required to be delivered to the Project Participants at index prices, creating the economic effect of fixing the discount below the index (market) price at which Energy is sold to the Project Participants. CCCFA Commodity Swap enables CCCFA to sell prepaid quantities to the Project Participants at index prices while ensuring that the net revenues from Project Participant payments and CCCFA Commodity Swap always equal or exceed debt service regardless of the index price of Energy at the time. Quantities, term, and delivery points for CCCFA Commodity Swap mirror those of the MSES Commodity Swap.

5. **Project Participants**: Under the Energy Supply Contract, CCCFA will sell to the Project Participants all of the Energy delivered by MSES on a pay-as-you-go basis at fixed prices less specified discounts determined to ensure that the month’s net Energy sale revenues (net of swap payments and receipts) will enable CCCFA to make scheduled deposits to the Debt Service Account.

6. **MS Guarantees**: The payment obligations of MSES under the Prepaid Energy Sales Agreement and the MSES Commodity Swap will be guaranteed by Morgan Stanley.

7. **Assigned PPAs**: Each Project Participant is expected to assign its rights to receive EPS Compliant Energy under existing and future Power Purchase Agreement to MSCG for delivery to MSES in order for MSES to meet its obligation to deliver EPS Compliant Energy to CCCFA under the Prepaid Energy Sales Agreement.

The cumulative effect of the Prepaid Energy Sales Agreement, CCCFA Commodity Swap, the Power Supply Contracts and related documents enables CCCFA to receive dependable Energy supplies at a discount below market prices for sale to the Project Participants. The resulting monthly net revenues, regardless of changes in Energy prices, are expected to be adequate to pay Debt Service requirements on the Bonds and program expenses when due.
INVESTMENT CONSIDERATIONS

The purchase of the Bonds involves certain investment considerations discussed throughout this Official Statement. Prospective purchasers of the Bonds should make a decision to purchase the Bonds only after reviewing the entire Official Statement and making an independent evaluation of the information contained herein. Certain of those investment considerations are summarized below. This summary does not purport to be complete, and the order in which the following investment considerations are presented is not intended to reflect their relative significance.

Special and Limited Obligations

The Bonds are special, limited obligations of CCCFA and are payable solely from and secured solely by the Trust Estate pledged pursuant to the Indenture. The Trust Estate includes only the proceeds, revenues, funds and rights related to the Clean Energy Project, as described under “SECURITY FOR THE BONDS — The Indenture” below and does not include any other revenues or assets of CCCFA. The Bonds are not general obligations of CCCFA, and CCCFA has no taxing power.

Only CCCFA is obligated to pay the Bonds. Neither Project Participant is obligated to make payments in respect of the debt service on the Bonds. The Project Participants are obligated only to purchase and pay for Prepaid Energy tendered for delivery by CCCFA at the Contract Price set forth therein. Neither the Energy Supplier, MSCG nor Morgan Stanley is obligated to make debt service payments on the Bonds, and none of them has guaranteed payment of the Bonds.

Structure of the Clean Energy Project

The Prepaid Energy Sales Agreement, the Power Supply Contracts, the Investment Agreement, the Commodity Swaps, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Energy Supplier, Morgan Stanley, the Investment Agreement Provider and the Project Participants of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are calculated to be sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds. During the Delivery Period that corresponds to the Initial Interest Rate Period for the Bonds, these arrangements include:

• The Energy Supplier is required to deliver Prepaid Energy under the Prepaid Energy Sales Agreement to CCCFA such that CCCFA can meet its obligations to the Project Participants under the Power Supply Contracts. In the event Assigned Quantities equivalent to the Prepaid Quantities are not delivered under the Assigned PPAs, and the Energy Supplier is unable to deliver make-up quantities of EPS Compliant Energy, the Energy Supplier is required to deliver equivalent quantities of Base Energy for remarketing. In the event the Energy Supplier fails to deliver Base Energy for any reason, including force majeure events, it is required to pay certain specified amounts to CCCFA.

• Each Project Participant has agreed to pay for Prepaid Energy tendered for delivery under its Power Supply Contract at the Contract Price. In the event a Project Participant fails to pay when due any amounts owed under its Power Supply Contract, CCCFA has covenanted in the Indenture to exercise its right under the Power Supply Contract to suspend further
deliveries of Prepaid Energy to such Project Participant and to give notice to the Energy Supplier to follow the provisions of the Prepaid Energy Sales Agreement with respect to Prepaid Energy for which delivery has been suspended.

- In the event that a Project Participant fails to pay for Prepaid Energy tendered for delivery by CCCFA or fails to pay damages for Prepaid Energy tendered by CCCFA and not taken, the Trustee is obligated to sell and, subject to caps established in the Receivables Purchase Provisions, MSES is obligated to purchase, Put Receivables.

- In the event of a suspension of Prepaid Energy deliveries to a Project Participant, the Energy Supplier will remarket Base Energy pursuant to the Prepaid Energy Sales Agreement. The Prepaid Energy Sales Agreement requires specified payments for all Base Energy remarked or purchased, less certain applicable fees.

- If a Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian under the terms of the Energy Supplier Custodial Agreement will pay the amount that the Energy Supplier paid under the corresponding Energy Supplier Commodity Swap (or in the event of termination of such Energy Supplier Commodity Swap, the amount that the Energy Supplier paid into the applicable custodial account as if such Energy Supplier Commodity Swap were still in effect), which such amount is held in custody, to CCCFA, and such payment will be treated as a Commodity Swap Receipt.

- If a Termination Event occurs under the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment to CCCFA.

- [____________], as provider of the Debt Service Account Investment Agreement (the “Investment Agreement Provider”) is required to make timely payment of scheduled amounts due under the Investment Agreement which, together with other Revenues, provide sufficient monies to CCCFA to pay debt service.

In the event that the Energy Supplier fails to perform its material obligations under the Prepaid Energy Sales Agreement, the Prepaid Energy Sales Agreement will terminate automatically in certain circumstances or CCCFA at its option may terminate the Prepaid Energy Sales Agreement in other circumstances. Upon any termination of the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment. The payment of the Termination Payment is guaranteed by Morgan Stanley under the Morgan Stanley Guarantee. In the event that the Prepaid Energy Sales Agreement is terminated, the Series 2021B-1 Bonds are to be redeemed at their Amortized Value and the Series 2021B-2 Bonds are to be redeemed at 100% of their principal amount (in each case plus accrued interest to the redemption date), regardless of reinvestment rates at the time. See “THE BONDS—Redemption—Extraordinary Mandatory Redemption.”

Performance by Others

During the Initial Interest Rate Period, the ability of CCCFA to pay timely the scheduled debt service on the Bonds depends on the timely performance and payment by (a) MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, the Energy Supplier
Commodity Swap and the Interest Rate Swap, (b) Morgan Stanley under the Morgan Stanley Guarantees, (c) the Project Participants under the Power Supply Contracts, and (d) the Investment Agreement Provider under the Investment Agreement. The failure by any one or more of such parties to meet such obligations could materially and adversely affect the ability of CCCFA to pay timely the scheduled debt service on the Bonds, and to meet its other obligations under the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contracts and, if applicable, the CCCFA Commodity Swaps.

The events and conditions that could result in either or both of (a) a default in the payment of Debt Service on the Bonds or (b) a Termination Event under the Prepaid Energy Sales Agreement, which will cause the extraordinary mandatory redemption of the Bonds, include items that may be within or outside the control of CCCFA or the Energy Supplier (or both), such as:

• failure by the Energy Supplier in the timely performance of its obligations under the Prepaid Energy Sales Agreement to deliver Prepaid Energy and to remarket any Base Energy;

• in the event of nonpayment by the Energy Supplier of its obligations under the Prepaid Energy Sales Agreement, the Receivables Purchase Provisions, the Energy Supplier Commodity Swap or the Interest Rate Swap, failure by Morgan Stanley in the timely payment of the guaranteed amounts under the Morgan Stanley Guarantees;

• the prospects and financial and operational performance of the Energy Supplier, MSCG and Morgan Stanley and their continuing ability to meet their respective obligations under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap, the Interest Rate Swap and the Morgan Stanley Guarantees, respectively, for their full terms;

• failure by the Project Participants in the timely performance of their Prepaid Energy purchase obligations under the Power Supply Contracts;

• failure by MSES in the timely performance of its obligation to purchase Put Receivables under the Receivables Purchase Provisions in the event of nonpayment by a Project Participant under a Power Supply Contract;

• in the event that a nonpayment by a Project Participant exceeds the Maximum Monthly Amount with respect to such Project Participant, failure by the Energy Supplier to exercise its option to purchase Call Receivables in an amount sufficient to enable CCCFA to make the next succeeding payment due under the CCCFA Commodity Swap in order to prevent a potential early termination of the CCCFA Commodity Swap;

• failure by the Energy Supplier in the performance of its remarketing obligations with respect to any Base Energy under the Prepaid Energy Sales Agreement, including particularly its continuing ability to remarket Base Energy to Municipal Utilities;

• failure by the Commodity Swap Counterparty in the timely performance of its obligations under the CCCFA Commodity Swap and the Energy Supplier Commodity Swap combined with a failure in the timely performance and enforcement of the Energy Supplier Custodial Agreement;
• failure by the Energy Supplier and CCCFA in the timely performance of their respective obligations under the Energy Supplier Commodity Swap and the CCCFA Commodity Swap;

• the inability of the Energy Supplier and CCCFA to replace timely any Commodity Swap that has been terminated;

• failure by MSES or CCCFA in the timely performance of their respective obligations under the Interest Rate Swap; and

• failure by the Investment Agreement Provider to make timely payment of the required amounts due or payable under the Investment Agreement.

Upon early termination of the Prepaid Energy Sales Agreement, the Energy Supplier will be obligated to pay the scheduled Termination Payment. The scheduled amount of the Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide CCCFA with an amount at least sufficient to redeem all of the Bonds, assuming that the Energy Supplier and the Investment Agreement Provider pay and perform their contract obligations when due.

In the case of a Failed Remarketing and a mandatory redemption of the Bonds on the Mandatory Purchase Date, the amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that the Energy Supplier, and Morgan Stanley as the guarantor of the payment obligations of the Energy Supplier, pay and perform their respective contract obligations when due. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture.

Energy Remarketing

California’s Emissions Performance Standard (“EPS”) regulations, codified as Senate Bill 1368 (2006) (“SB 1368”) prevents all California utilities, both privately and publicly owned, from signing long-term contracts with a greenhouse gas emissions greater per unit of power than the emissions of greenhouse gases for combined-cycle natural gas baseload generation. For baseload generation procured under contracts, a long-term commitment is a contract of five years or longer. In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations under the Assigned PPAs, each Project Participant may propose to assign Replacement Assigned Rights and Obligations to MSCG for delivery of EPS Compliant Energy to the Energy Supplier. Each of the Project Participants has or expects to have additional power purchase agreements pursuant to which it purchases or expects to purchase EPS Compliant Energy and wherein its rights and obligations thereunder could be assigned to MSCG.

In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, the shortfall quantities will be delivered and remarked as Base Energy under the Prepaid Energy Sales Agreement. Any such remarketing of Base Energy will be treated as a private-business use sale, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES
is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

If a Project Participant experiences a loss of Energy load such that it has insufficient demand for the Prepaid Quantities, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

In the event that MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

Base Energy is not expected to be delivered during the Initial Reset Period.

Limitations on Exercise of Remedies

The remedies available to CCCFA under the Prepaid Energy Sales Agreement are limited to those described herein. The remedies available to the Trustee, CCCFA and the Holders of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory provisions and judicial decisions, the remedies provided in the Indenture may not be readily available or may be limited.

Enforceability of Contracts

The enforceability of the various legal agreements relating to the Clean Energy Project may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors or secured parties generally, by the exercise of judicial discretion in accordance with general principles of equity and by principles of equity, public policy and commercial reasonableness. The Prepaid Energy Sales Agreement and other agreements relating to the Clean Energy Project are executory contracts. If CCCFA, the Energy Supplier, Morgan Stanley, a Commodity Swap Counterparty, a Project Participant or any of the parties with which CCCFA has contracted under such agreements (including the Prepaid Energy Sales Agreement) is involved in a bankruptcy proceeding, the relevant agreement could be discharged in return for a claim for damages against the party’s estate with uncertain value. In the event that CCCFA is involved in an insolvency proceeding, the exercise of the remedies afforded to the Trustee under the Indenture may be stayed, and the availability of the Revenues necessary for the payment of the Bonds could be materially and adversely affected.
No Established Trading Market

The Bonds constitute a new issue with no established trading market. The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained therein. Although the Underwriter has informed CCCFA that it currently intends to make a market in the Bonds, they are not obligated to do so and may discontinue any such market making at any time without notice. There can be no assurance as to the development or liquidity of any market for the Bonds. If an active public market does not develop, the market price and liquidity of the Bonds may be adversely affected.

Loss of Tax Exemption on the Bonds

As described below, the opinion of Bond Counsel with respect to the exclusion of interest on the Bonds from gross income for federal income tax purposes is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel’s judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (the “IRS”) or the courts, and is not a guarantee of a result.

The Indenture, CCCFA’s Tax Agreement with respect to the Bonds, the Prepaid Energy Sales Agreement and the Power Supply Contracts contain various covenants and agreements on the part of CCCFA, the Energy Supplier and the Project Participants that are intended to establish and maintain the tax-exempt status of the Bonds. CCCFA, the Energy Supplier and the Project Participants have each agreed to abide by the various covenants and agreements designed to protect the tax-exempt status of the Bonds. A failure by CCCFA, the Energy Supplier and the Project Participants to comply with such covenants and agreements could, directly or indirectly, adversely affect the tax-exempt status of the Bonds.

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. It cannot be predicted whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, under current procedures the IRS may treat CCCFA as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market value and liquidity of the Bonds until the audit is concluded, regardless of the ultimate outcome.

Any loss of the tax-exempt status of the Bonds could be retroactive to the date of issuance of the Bonds and could cause all of the interest on the Bonds to be includable in gross income for purposes of federal income taxation. The loss of the tax-exempt status of the Bonds is not a termination event under the Prepaid Energy Sales Agreement and will not result in a mandatory redemption of the Bonds. See “THE PREPAID ENERGY SALES AGREEMENT ” and “TAX MATTERS.”

SECURITY FOR THE BONDS

The Indenture

The Bonds are secured under the Indenture solely by a pledge of and lien on the “Trust Estate,” which is defined in the Indenture to include (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Power Supply Contracts, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such
Termination Payment (e) all right, title and interest of Issuer in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of CCCFA in, to and under the Morgan Stanley Guarantee, (g) all right, title and interest of CCCFA in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of CCCFA in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

The pledge of and lien on the Trust Estate in favor of the Bonds is subject to (x) the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, including the first charge on the Revenues to pay Operating Expenses of the Project, and (y) a prior lien on and security interest in the Commodity Swap Payment Fund in favor of the Commodity Swap Counterparty.

The term “Revenues” is defined in the Indenture to include (a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by CCCFA from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by CCCFA under the Power Supply Contracts and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale, transportation and/or transmission of Energy or otherwise with respect to Clean Energy Project, (b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund; and (c) any Commodity Swap Receipts received by the Trustee on behalf of CCCFA; provided that, the term “Revenues” shall not include: (i) any Termination Payment pursuant to the Prepaid Energy Sales Agreement; (ii) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to the Indenture; (iii) amounts paid by the Project Participants in respect of the Project Administration Fee; (iv) any Assignment Payment received from the Energy Supplier; (v) Interest Rate Swap Receipts (which are to be deposited directly into the Debt Service Account); and (vi) payments received from the Energy Supplier pursuant to the Receivables Purchase Provisions in respect of Call Receivables. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Project. See “Flow of Funds” below.

The term “Operating Expenses” is defined in the Indenture to mean, to the extent properly allocable to the Clean Energy Project: (a) CCCFA’s expenses for operation of the Clean Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Prepaid Energy Sales Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of CCCFA’s obligations under the Power Supply Contracts; (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of the Indenture (other than Debt Service on the Bonds) or by law or required to be incurred under or in connection with the performance of CCCFA’s obligations.
under the Power Supply Contracts; (c) fees payable by CCCFA with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses incurred by CCCFA, including but not limited to those relating to the administration of the Trust Estate and compliance by CCCFA with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by CCCFA, including, without limitation, directors and officers liability insurance. Commodity Swap Payments, litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA OR ITS MEMBERS, THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE OR THE PROJECT PARTICIPANTS. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY A LIEN ON THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER.

THE OBLIGATIONS OF THE PROJECT PARTICIPANTS TO MAKE PAYMENTS TO CCCFA UNDER THE POWER SUPPLY CONTRACTS ARE NOT, NOR SHALL THEY BE CONSTRUED AS, A GUARANTY OR ENDORSEMENT OF OR A SURETY FOR, THE BONDS. SUCH OBLIGATIONS OF THE PROJECT PARTICIPANTS ARE NOT GENERAL OBLIGATIONS OF THE PROJECT PARTICIPANTS AND ARE PAYABLE SOLELY FROM THE REVENUES DERIVED FROM SALES OF ENERGY TO THEIR CUSTOMERS. THE INDENTURE DOES NOT MORTGAGE THE CLEAN ENERGY PROJECT OR ANY TANGIBLE PROPERTIES OR ASSETS OF CCCFA OR THE PROJECT PARTICIPANTS.

See APPENDIX B for definitions of certain terms and see APPENDIX C for a further description of certain provisions of the Indenture.

Flow of Funds

All Revenues are required by the Indenture to be deposited upon receipt thereof to the credit of the Revenue Fund. Moneys (to the extent available) are required to be transferred from the Revenue Fund monthly on or before the 25th day of each month (or, if such day is not a Business Day, the next succeeding Business Day), except as noted below, to the extent available and in the order set forth below:

*first* to the Administrative Fee Fund, the amounts received from the Project Participants under the Power Supply Contracts in respect of CCCFA’s administrative fees, subject to monthly limits on the amount of such transfers;

*second* to the Operating Fund, the amount, if any, required so that the balance therein shall equal the amount estimated to be necessary for the payment of Operating Expenses coming due for the following Month (but no such payments or expenses for any prior Month);

*third* subject to the provisos below, to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in the Indenture, or (B) the amount necessary to cause the cumulative Scheduled Debt Service Deposits to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

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fourth to the Commodity Swap Payment Fund, the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

fifth To the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Call Receivables and the payment of interest on all Call Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

provided, however, that if a Project Participant’s payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred to the Debt Service Account to the extent necessary such that the amount available for transfer to the Commodity Swap Payment Fund is not less than (a) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (b) the sum of all Net Participant Shortfall Amounts for such Month; and provided further, the amount required to be transferred to the Debt Service Account pursuant to clause (iii) above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

If, after the scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified in the Indenture, the Trustee shall immediately notify CCCFA of such deficiency and the Trustee shall (a) if CCCFA has not previously done so, cause CCCFA to suspend all deliveries of all quantities of Energy under a Power Supply Contract to the Project Participant that is in default thereunder, and (b) promptly give notice to the Energy Supplier to follow the remarketing provisions set forth in the Prepaid Energy Sales Agreement.

In each Month during which (a) there is a deposit of Revenues into the Revenue Fund and (b) payment of a Principal Installment is due, after making such transfers, credits and deposits as described in the first paragraph of this section “Flow of Funds,” and after the applicable Principal Installment payment date, the Trustee shall credit to the General Fund the remaining balance in the Revenue Fund. See “Revenues and Revenue Fund” and “Payments into Certain Funds” in APPENDIX C.

As noted above, certain amounts are pledged as a part of the Trust Estate but do not constitute Revenues and are not deposited into the Revenue Fund, including (a) any Termination Payment received under the Prepaid Energy Sales Agreement, which is to be deposited directly into the Redemption Account, (ii) any payments received from the Energy Supplier under the Receivables Purchase Provisions in respect of Call Receivables, which are to be deposited into the Commodity Swap Payment Fund, and (iii) any Interest Rate Swap Receipts, which are to be deposited into the Debt Service Account, all as provided in the Indenture.

Debt Service Account

The amounts deposited into the Debt Service Account, including the Capitalized Interest Subaccount therein, must be held in such Account and applied to the payment of Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date when due. Amounts on deposit in the Debt Service Account, including the Capitalized Interest Subaccount therein, will be invested pursuant to the Debt Service Account Investment Agreement, which will provide for scheduled withdrawals to pay debt
service on the Bonds when due and, in the case of extraordinary redemption, to pay the Redemption Price without penalty or market value adjustments.

The Capitalized Interest Subaccount of the Debt Service Account will be funded with a deposit of Bond proceeds on the Initial Issue Date of the Bonds. The amount so deposited will be used to pay the interest coming due on the Bonds and the Interest Rate Swap through ____________.

**Commodity Swap Payment Fund**

The amounts deposited into the Commodity Swap Payment Fund shall be applied from time to time by the Trustee solely to the payment of Commodity Swap Payments when due.

In the event that (i) a Project Participant fails to pay the amount due under its Power Supply Contract and (ii) as of the next Business Day, there is or will be a Swap Payment Deficiency, the Trustee shall prepare and deliver to the Energy Supplier a Call Receivables Offer pursuant to the Receivables Purchase Provisions. If the Energy Supplier elects to purchase Call Receivables pursuant to such Call Receivables Offer, which election shall not be later than the Business Day following receipt by the Energy Supplier of the Call Receivables Offer, the Energy Supplier shall deliver to the Trustee the Call Option Notice setting forth the purchase date, which shall be the 25th day of the Month in which the Energy Supplier receives the Call Receivables Offer (or if such day is not a Business Day, the next succeeding Business Day). The Trustee is authorized to sell the Call Receivables then owed by the Project Participants pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. If the Energy Supplier elects to purchase such Call Receivables, all amounts received pursuant to the Receivables Purchase Provisions in respect of Call Receivables purchased shall be deposited in the Commodity Swap Payment Fund and applied to payment of Commodity Swap Payments.

Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application as described above.

**Redemption Account**

In the event of an early termination under the Prepaid Energy Sales Agreement, the Energy Supplier must pay the Termination Payment directly to the Trustee for the account of CCCFA into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the extraordinary mandatory redemption of Outstanding Bonds as described below under “THE BONDS — Redemption — Extraordinary Mandatory Redemption.”

**Restriction on Additional Obligations**

Except as expressly permitted under the terms of the Indenture for so long as the Bonds are Outstanding, CCCFA shall not, without a Rating Confirmation, issue any bonds, notes, debentures or other evidences of indebtedness of similar nature, other than the Bonds and any refunding bonds, or otherwise incur obligations other than those contemplated by the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the CCCFA Custodial Agreements, the Commodity Swaps, and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments), payable out of or secured by a pledge or assignment of, or lien on, the Trust Estate; and,
except as expressly permitted under the terms of this Indenture, shall not, without a Rating Confirmation, create or cause to be created any lien or charge on the Trust Estate except as provided in or contemplated by the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the CCCFA Custodial Agreements, the Commodity Swaps, and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments).

Nothing contained in the Indenture shall prevent CCCFA from entering into or issuing, if and to the extent permitted by law (a) evidences of indebtedness (1) payable out of moneys in the Project Fund as part of the Cost of Acquisition or (2) payable out of or secured by a pledge and assignment of the Trust Estate or any part thereof to be derived on and after such date as the pledge of the Trust Estate provided in the Indenture shall be discharged and satisfied as provided therein, or (b) Commodity Swaps and Interest Rate Swaps upon the terms and conditions set forth herein.

Amendment of Indenture

CCCFA and the Trustee may, subject to the conditions and restrictions in the Indenture, enter into a Supplemental Indenture or Indentures without the consent of the Bondholders for certain purposes upon receipt of a Rating Confirmation. See “Supplemental Indenture Not Requiring Consent of Bondholders,” “General Provisions” and “Powers of Amendment” in APPENDIX C hereto.

Investment of Funds

General. Subject to the provisions of the Indenture, amounts on deposit in the Funds and Accounts may be invested in, among other things, guaranteed investment contracts, forward delivery agreements or similar agreements that provide for a specified rate of return over a specified time period with providers (or their guarantors) rated at the time the investment is made at least at the same credit rating level as the Energy Supplier (or if the Energy Supplier is not rated, the credit rating level of its guarantor). See APPENDIX B—DEFINITIONS OF CERTAIN TERMS and “Investment of Certain Funds” in APPENDIX C.

Debt Service Account Investment Agreement. On the Initial Issue Date of the Bonds, it is expected that CCCFA or the Trustee will enter into an investment agreement (which may be in the form of an ISDA Master Agreement) with respect to the Debt Service Account, including the Capitalized Interest Subaccount therein (the “Debt Service Account Investment Agreement”). The Debt Service Account Investment Agreement constitutes a “Debt Service Fund Agreement” as defined in the Indenture. The Debt Service Account Investment Agreement will have a term coterminous with the Initial Interest Rate Period and is required to meet all of the criteria of a Qualified Investment under the Indenture and is expected to be bid out on the day of Bond pricing to qualified investment providers.

Required qualifications for the initial Investment Agreement Provider include: (a) a minimum credit rating requirement for the Investment Agreement Provider (or its guarantor) of at least that of Morgan Stanley, which as of the date of this Official Statement is “A1” by Moody’s, and (b) a requirement that upon a credit rating withdrawal, suspension or downgrade of the Investment Agreement Provider (or its guarantor) below the lower of (i) “A1” by Moody’s or (ii) the then-current credit rating of Morgan Stanley, the Investment Agreement Provider will provide a credit remedy, such as providing credit support or posting eligible collateral, or CCCFA will have the right to terminate the agreement.
Required qualifications for a Debt Service Account Investment Agreement that is a forward delivery agreement include: (a) the minimum credit rating requirement described in the clause (a) of the preceding paragraph, (b) the credit downgrade provisions described in clause (b) of the preceding paragraph, (c) opinions of counsel, domestic and foreign, where applicable, that the securities delivered in connection with the agreement do not constitute property of the forward delivery agreement provider under bankruptcy, and will not be subject to automatic stay, and (d) a limitation that the only securities the forward delivery agreement provider is allowed to deliver are non-callable, non-prepayable (i) direct obligations of the United States government or any of its agencies that are unconditionally guaranteed as to principal and interest by the United States of America, or (ii) senior debt obligations of any agency of the United States government.

The Debt Service Account Investment Agreement will provide for a fixed interest rate to be paid on the funds invested and will provide for scheduled withdrawals in connection with certain Bond Payment Dates.

Upon transaction termination, whether by extraordinary mandatory redemption or final maturity, the funds invested under the Debt Service Account Investment Agreement will be used to pay the redemption price or debt service due on the Bonds. If the Debt Service Account Investment Agreement terminates, all invested funds are required to be returned to the Trustee.

Enforcement of Project Agreements

Power Supply Contracts. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Power Supply Contracts, as well as any other contract or contracts entered into relating to the Clean Energy Project, and that it will duly perform its covenants and agreements thereunder.

CCCFA has also covenanted to exercise promptly its right to suspend all deliveries of Energy under a Power Supply Contract if the Project Participant thereunder fails to pay when due any amounts owed thereunder and to promptly give notice to the Energy Supplier to follow provisions set forth in the Prepaid Energy Sales Agreement for each month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

In the event that the Project Participant makes a Remarketing Election with respect to any Reset Period, CCCFA will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Prepaid Energy Sales Agreement for each month of such Reset Period with respect to the quantities of Energy that would otherwise have been delivered to such Project Participant. See “THE RE-PRICING AGREEMENT.”

CCCFA has further covenanted that it will not consent or agree to or permit any termination or rescission of, any assignment or novation (in whole or in part) by the Project Participants of, or any amendment to, or otherwise take any action under or in connection with, the Power Supply Contracts that will impair the ability of CCCFA to comply during the current or any future year with the collection of fees and charges pursuant to the Indenture. Under the Indenture, upon the satisfaction of certain conditions, including delivery of a Rating Confirmation from each rating agency then rating the Bonds, CCCFA may amend a Power Supply Contract or assign all or a portion of a Power Supply Contract with a Project Participant to another Municipal Utility.
Trustee as Agent. Under the Indenture, CCCFA has appointed and directed the Trustee as its agent to issue notices and to take any other actions that CCCFA is required or permitted to take in order to enforce performance under the (a) Prepaid Energy Sales Agreement, (b) the Receivables Purchase Provisions, and (c) the Power Supply Contracts. CCCFA has retained, in the absence of any conflicting action by the Trustee, all of its obligations under the foregoing agreements and the right to exercise any rights for which it has appointed the Trustee as its agent as described in the preceding sentence, and provided that no default under the applicable Power Supply Contract has occurred and is continuing, CCCFA has agreed to take direction as to such matters from the Project Participants acting collectively; provided, however, if an Event of Default has occurred, the Trustee will have the right to notify CCCFA to cease exercising such rights, subject to certain rights of the Energy Supplier and the Project Participants under the Power Supply Contracts.

Prepaid Energy Sales Agreement. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Prepaid Energy Sales Agreement and that it will duly perform its covenants and agreements under the Prepaid Energy Sales Agreement.

The Trustee will promptly notify CCCFA of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Prepaid Energy Sales Agreement. CCCFA will provide the Trustee with Written Notice of the Early Termination Payment Date (a) by 12:00 noon, New York City time, on the fifth Business Day preceding a Mandatory Purchase Date if an amount equal to the Purchase Price of the Bonds that are subject to such Mandatory Purchase Date has not been deposited with the Trustee and (b) in all other cases, not more than five Business Days after such date is determined.

CCCFA has further covenanted that it will not consent or agree to or permit any rescission or assignment of or amendment to or otherwise take any action under or in connection with the Prepaid Energy Sales Agreement which would in any manner materially impair or materially adversely affect its rights thereunder or the rights or security of the Bondholders under the Indenture; provided, that the Prepaid Energy Sales Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation.

CCCFA Commodity Swap. Amounts due to CCCFA under the CCCFA Commodity Swap are payable directly to the Trustee. Pursuant to the Indenture, Commodity Swap Receipts are to be deposited by the Trustee into the Revenue Fund. CCCFA has covenanted in the Indenture that:

• it will enforce the provisions of the CCCFA Commodity Swap and duly perform its covenants and agreements thereunder,

• it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the CCCFA Commodity Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and

• it will not exercise any right to terminate the CCCFA Commodity Swap unless either (i) it has entered into a replacement CCCFA Commodity Swap that meets the requirements of the Indenture (described below) or (ii) the Early Termination Date will occur under the Prepaid Energy Sales Agreement prior to or as of the termination date of the CCCFA Commodity Swap.
CCCFA may replace the CCCFA Commodity Swap (and any related guaranty of the Commodity Swap Counterparty’s obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty upon delivery to the Trustee of a Rating Confirmation. If the CCCFA Commodity Swap is subject to termination, CCCFA may enter into a replacement CCCFA Commodity Swap without a Rating Confirmation, but only if the proposed replacement CCCFA Commodity Swap is identical in all material respects to the existing CCCFA Commodity Swap that is to be replaced, and the counterparty under the replacement CCCFA Commodity Swap (or its guarantor) (a)(i) is rated not lower than the rating of the Energy Supplier (or its guarantor) or the ratings then assigned to the Bonds (whichever is lower) or (ii) provides such collateral and security arrangements as CCCFA determines to be necessary, and (b) enters into replacement Custodial Agreements with the Energy Supplier and CCCFA.

In the event that the CCCFA Commodity Swap is terminated by CCCFA and is not replaced (a) within the 120-day replacement period provided for in the Prepaid Energy Sales Agreement or (b) after six consecutive monthly payments have been received by CCCFA from the Custodian (instead of directly from the Commodity Swap Counterparty), CCCFA has covenanted in the Indenture that it will exercise its right to terminate the Prepaid Energy Sales Agreement in accordance with its terms. Further, CCCFA has covenanted under the Indenture to terminate the CCCFA Commodity Swap (a) within 120 days if it is not receiving payments owed to it thereunder, or (b) after six consecutive monthly payments by the Custodian if CCCFA is receiving payments from the Custodian instead of directly from the Commodity Swap Counterparty, in order to replace both the CCCFA Commodity Swap and the Energy Supplier Commodity Swap.

**Interest Rate Swap.** Amounts due to CCCFA under the Interest Rate Swap are payable directly to the Trustee. Pursuant to the Indenture, Interest Rate Swap Receipts are to be deposited by the Trustee in the Debt Service Account. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder,
- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and
- it will not exercise any right to terminate the Interest Rate Swap unless it either (i) has entered into a replacement Interest Rate Swap that meets requirements specified in the Indenture or (ii) causes or permits the early termination of the Prepaid Energy Sales Agreement prior to or as of the termination date of the Interest Rate Swap.

CCCFA may enter into a replacement Interest Rate Swap at any time by delivering a Rating Confirmation to the Trustee. If the Interest Rate Swap is subject to termination, CCCFA may enter into a replacement Interest Rate Swap without a Rating Confirmation if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap and (a) the counterparty to the replacement Interest Rate Swap is rated not lower than (i) the credit rating of the Energy Supplier or its guarantor or (ii) the rating assigned to the Bonds by each Rating Agency then rating the Bonds, whichever
is less, or (b) the counterparty to the replacement Interest Rate Swap provides such collateral and security arrangements as CCCFA determines to be necessary.

**SOURCES AND USES OF FUNDS**

The sources and uses of funds in connection with the issuance of the Bonds are approximately as follows:

**SOURCES:**

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<th>Description</th>
<th>Amount</th>
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<td>Original Issue Premium</td>
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**USES:**

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<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
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<tr>
<td>Costs of Issuance</td>
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</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

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1 Includes the prepayment amount and capitalized interest on the Bonds (which will be transferred to the Debt Service Account).
2 Includes management, consulting, underwriting, rating agency, Trustee, financial advisor, legal and other fees and other expenses related to the issuance of the Bonds and the acquisition of the Clean Energy Project.

**THE BONDS**

*General*

The Bonds will mature (subject to redemption as described below) on the dates and in the principal amounts shown on the inside cover page of this Official Statement. The Bonds will be initially issued in denominations of $5,000 and whole multiples thereof (an “Authorized Denomination”). The Bonds will be initially issued in book-entry only form through the facilities of The Depository Trust Company, New York, New York (“DTC”). See “THE BONDS — Book-Entry System” and APPENDIX F for a description of DTC and its book-entry system.

*Interest*

During the Initial Interest Rate Period, the Bonds will bear interest as described below.

**Series 2021B-1 Bonds**

During the Initial Interest Rate Period, the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period, with the Series 2021B-1 Bonds of each maturity bearing interest at the fixed rates shown on the inside cover page of this Official Statement. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds will be payable semiannually on _____ 1 and _____ 1 of each year, commencing ___________. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds will be computed on the basis of a 360-day year of twelve 30-day months.
Series 2021B-2 Bonds

The Initial Interest Rate Period for the Series 2021B-2 Bonds will be a SIFMA Index Rate Period, and the Series 2021B-2 Bonds will bear interest at the SIFMA Index Rate determined as described below during the SIFMA Index Rate Period.

Interest Payments. Interest on each Series 2021B-2 Bond is payable on the first Business Day of each month, commencing with the first Business Day of _____ 2021, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

Determination of the SIFMA Index Rate. At least two Business Days prior to the Initial Issue Date of the Series 2021B-2 Bonds, the SIFMA Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, the SIFMA Index Rate shall be determined by the Calculation Agent and shall be effective from an Index Rate Reset Date to but not including the following Index Rate Reset Date. Upon the written request of any Owner of Series 2021B-2 Bonds, the Trustee shall confirm the SIFMA Index Rate then in effect. All percentages resulting from any step in the calculation of interest on the Series 2021B-2 Bonds while in the SIFMA Index Rate Period will be rounded, if necessary, to the nearest hundred-thousandth of a percentage point (i.e., to five decimal places) with five millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on the Series 2021B-2 Bonds will be rounded to the nearest cent (with one-half cent being rounded upward).

SIFMA Index Rate. The SIFMA Index Rate is a variable per annum rate of interest equal to the sum of (i) the SIFMA Index plus (ii) the Applicable Spread.

Applicable Spread. The Applicable Spread is the margin added to the SIFMA Index as shown on the inside cover page of this Official Statement for the Series 2021B-2 Bonds. The Applicable Spread shall remain constant for the duration of the SIFMA Index Rate Period.

SIFMA Index. “SIFMA Index” means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the immediately succeeding Business Day. If the SIFMA Index is not available as of any Index Rate Reset Date, a substitute or replacement index for such Index Rate Reset Date will be designated by CCCFA in compliance with the Indenture.

Index Rate Reset Date. The Index Rate Reset Date for the SIFMA Index Rate applicable to the Series 2021B-2 Bonds shall be Thursday of each week or, if the SIFMA Index is not issued on Wednesday of such week, the Business Day next succeeding the day on which the SIFMA Index for such week is issued.

* Preliminary; subject to change.

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Draft Preliminary Offering Statement
Calculation Agent

[_________________] will be appointed by CCCFA as Calculation Agent for any Series 2021B-2 Bonds that are issued pursuant to the Indenture and a Calculation Agent Agreement between the parties.

General

After the Initial Interest Rate Period, the Outstanding Bonds may be remarketed into another Fixed Rate Period or Index Rate Period(s), as applicable, or may be remarketed or converted to one or more of a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period or an Index Rate Period(s). This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after the Bonds have been converted to another Interest Rate Period.

Interest on any Bond that is payable and is punctually paid or for which payment is duly provided for on any Interest Payment Date, shall be paid to the Person in whose name that Bond is registered at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the “Regular Record Date”); provided that in the case of the first Interest Payment Date for the Index Rate Bonds, the record date shall be the Initial Issue Date.

Any interest on any Bond that is payable, but is not punctually paid or duly provided for on any Interest Payment Date (“Defaulted Interest”), shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by CCCFA to the Persons in whose names the Bonds are registered at the close of business on a date (the “Special Record Date”) for the payment of such Defaulted Interest, which shall be fixed in the following manner: CCCFA shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time CCCFA shall deposit with the Paying Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in the Indenture. The Bond Registrar will then fix a Special Record Date for the payment of such Defaulted Interest which will be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the notice of the proposed payment. The Bond Registrar shall promptly notify CCCFA of such Special Record Date and, in the name and at the expense of CCCFA, will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

Tender

Mandatory Tender. The Bonds of each Series maturing on _____ 1, 20__ are required to be tendered for purchase on _____ 1, 20__ (the “Mandatory Purchase Date”), which is the day following the end of the Initial Interest Rate Period. The Purchase Price of the Bonds on the Mandatory Purchase Date is equal to 100% of the principal amount thereof and is payable in immediately available funds first from amounts on deposit in the Remarketing Proceeds Account established by the Indenture and second from amounts on deposit in CCCFA Purchase Account established by the Indenture. Accrued interest due
on the Bonds on the Mandatory Purchase Date, which is an Interest Payment Date, shall be paid from amounts in the Debt Service Account.

The Purchase Price of each Bond on the Mandatory Purchase Date shall be payable only upon surrender of such Bond to the Trustee at its Principal Office, accompanied by an instrument of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in a notice provided to the Owners by the Trustee, such notice to be given no less than 15 days prior to the applicable Mandatory Purchase Date. In the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on the Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and no interest shall accrue thereon on and after the Mandatory Purchase Date, and the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof.

**Failed Remarketing.** Under the Indenture, a “Failed Remarketing” means, (a) with respect to the Bonds on the Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date, or (b) with respect to the Bonds (i) if, on the last day of the Initial Reset Period prior to the Mandatory Purchase Date, CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by 12:00 noon, New York City time, on the fifth business day preceding such Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. In the case of a Failed Remarketing, an extraordinary mandatory redemption of the Bonds will have the same economic effect on Bondholders as a mandatory tender of the Bonds on the Mandatory Purchase Date.

**No Optional Tender.** The Bonds of each Series are **not** subject to optional tender by Bondholders during the Initial Interest Rate Period.

**Redemption**

**Optional Redemption of Series 2021B-1 Bonds.** The Series 2021B-1 Bonds are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and by lot within a maturity) on any date prior to ____________ at a Redemption Price, calculated by a quotation agent selected by CCCFA, equal to the greater of:

(a) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2021B-1 Bonds to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of the stated maturity date of such Series 2021B-1 Bond or the Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax-Exempt Municipal Bond Rate (described below) for such Series 2021B-1 Bonds minus 0.25% per annum, and

(b) the Amortized Value thereof (described below);
in each case plus accrued and unpaid interest to the date of redemption.

The Series 2021B-1 Bonds maturing on and after the Mandatory Purchase Date are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and by lot within a maturity) on any date on or after __________ at a Redemption Price equal to the Amortized Value thereof as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2021B-1 Bonds to be redeemed), as follows:

<table>
<thead>
<tr>
<th>REDUCTION PERIOD</th>
<th>REDUCTION PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(DATES INCLUSIVE)</td>
<td>MATURITY</td>
</tr>
</tbody>
</table>

in each case plus accrued and unpaid interest to the date of redemption.

In lieu of redeeming the Bonds pursuant to this provision, CCCFA may direct the Trustee to purchase the Bonds at a Purchase Price equal to the Redemption Price described above. Any Bonds so purchased may be remarketed in a new Interest Rate Period.

The “Applicable Tax-Exempt Municipal Bond Rate” means, for the Series 2021B-1 Bonds of any maturity, the “Comparable AAA General Obligations” yield curve rate for the year of such maturity (or Mandatory Purchase Date, as applicable) as published by Municipal Market Data at least five Business Days and not more than fifteen Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the “Comparable AAA General Obligations” yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax-Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight-line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax-Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the “Comparable AAA General Obligations” yield curve rate, then the Applicable Tax-Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma-research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax-Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax-exempt general obligation bonds rated in the highest Rating Category by Moody’s and S&P with a maturity date equal to the stated maturity date (or Mandatory Purchase Date, as applicable) of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent’s determination of the Applicable Tax-Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.

“Amortized Value” means, with respect to 2021B-1 Bond to be redeemed during the Initial Interest Rate Period, the principal amount of such 2021B-1 Bond multiplied by the price of such Bond expressed
as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond, or (b) the Mandatory Purchase Date, and a yield equal to such Bond’s original reoffering yield (as set forth on the inside cover page of this Official Statement), provided that in the case of an optional redemption of the Series 2021B-1 Bonds on or after ____________, the Amortized Value shall be determined as of the first day of the month in which such redemption occurs. The Amortized Value of the Bonds as of certain dates during the Initial Interest Rate Period is shown on APPENDIX G.

Optional Redemption of Index Rate Bonds. The Index Rate Bonds are subject to redemption at the option of CCCFA in whole or in part on any day on and after the first day of the third month preceding the Mandatory Purchase Date, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the date of redemption. In lieu of redeeming Index Rate Bonds pursuant to this provision, CCCFA may direct the Trustee to purchase such Index Rate Bonds at a Purchase Price equal to the Redemption Price described above. Any Index Rate Bonds so purchased may be remarketed in a new Interest Rate Period.

Extraordinary Mandatory Redemption. The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the month following the Early Termination Payment Date (which will be the same day as the Mandatory Purchase Date in the event a Failed Remarketing has occurred) at a Redemption Price equal to (a) in the case of the Series 2021B-1 Bonds, the Amortized Value thereof, and (b) in the case of the Index Rate Bonds, 100% of the principal amount thereof, in each case plus accrued and unpaid interest to the redemption date. See APPENDIX H for a schedule showing the Redemption Price (excluding accrued interest) of all of the Bonds upon an extraordinary mandatory redemption following an Early Termination Payment Date that occurs during the Initial Interest Rate Period.

CCCFA shall provide the Trustee with Written Notice of the Early Termination Payment Date (x) on the fifth business day preceding a Mandatory Purchase Date if an amount equal to the Purchase Price of the Bonds that are subject to such Mandatory Purchase Date has not been deposited with the Trustee and (y) in all other cases, not more than five days after such date is determined.

Notice of Redemption. In the case of every redemption of Bonds, the Trustee must cause notice of such redemption to be given to the Holder of any Bonds designated for redemption, in whole or in part, at such Holder’s address as the same shall last appear upon the registration books maintained by the Trustee, by mailing a copy of the redemption notice, by first-class mail, postage prepaid, not less than 20 days [(15 days in the case of an extraordinary mandatory redemption described above)] and not more than 45 days (30 days in the case of an extraordinary mandatory redemption described in the preceding paragraph) prior to the redemption date.

Each notice of redemption must identify the Bonds to be redeemed and specify the redemption date, the Redemption Price or the manner in which it will be calculated, that the Bonds must be surrendered to collect the Redemption Price, the address at which the Bonds must be surrendered, and that on and after said date interest on the Bonds will cease to accrue. Neither any defect in any redemption notice nor the failure of any Holder to receive any such notice will affect the validity of the proceedings for the redemption of the Bonds or any portions thereof with respect to any Holder to whom notice as required by the Indenture was given.
In the event that the Bonds become subject to extraordinary redemption as a result of a Failed Remarketing that occurs as a result of the Trustee not receiving the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds may be a conditional notice of redemption, delivered not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee’s failure to receive, by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to a mandatory tender on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds will be deemed to have been paid under the Indenture, such notice must state that such redemption will be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such moneys shall not have been so received said notice will be of no force and effect, and CCCFA will not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption will not be made and the Trustee must within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received and that such redemption was not made.

Effect of Redemption. On any redemption date, the Redemption Price of each Bond to be redeemed, together with the accrued interest thereon to such date, will become due and payable, and from and after such date, notice having been given and moneys available solely for such redemption being on deposit with the Trustee in accordance with the provisions of the Indenture governing redemption of such Bonds, then, notwithstanding that any Bonds called for redemption may not have been surrendered, no further interest will accrue on any of such Bonds. From and after such date of redemption (such notice having been given and moneys available solely for such redemption being on deposit with the Trustee), the Bonds to be redeemed will not be deemed to be Outstanding under the Indenture.

Partial Redemption of Bonds. If less than all of the Bonds of a like maturity, tenor and series are called for redemption, such Bonds or portions of Bonds of such series, maturity and tenor must be redeemed in increments of Authorized Denominations, and such increments to be called for redemption must be selected by lot in such manner as the Trustee determines. Upon surrender of any Bond called for redemption in part only, CCCFA must execute, and the Trustee must authenticate and deliver to the Holder thereof, a new Bond or Bonds of Authorized Denominations and the same series, tenor and maturity in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

Book-Entry System

The Bonds will be initially issued in book-entry only form through the facilities of DTC. The Bonds will be transferable and exchangeable as set forth in the Indenture and, when issued, will be registered in the name of Cede & Co., as nominee of DTC. DTC will act as securities depository for the Bonds. So long as Cede & Co. is the registered owner of the Bonds, principal of and premium, if any, and
interest on the Bonds are payable by wire transfer by the Trustee to Cede & Co., as nominee for DTC, which, in turn, will remit such amounts to DTC participants for subsequent disbursement to the Beneficial Owners. See APPENDIX F — “BOOK-ENTRY SYSTEM.”

DEBT SERVICE REQUIREMENTS

Set forth in the following table are the Debt Service requirements on the Bonds, giving effect to the fixed interest rates payable by CCCFA under the Interest Rate Swap, in each bond year during the Initial Interest Rate Period, excluding the purchase price of the Bonds that mature on ____________ that is payable on the Mandatory Purchase Date (____________).

<table>
<thead>
<tr>
<th>YEAR ENDING</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>____________</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

As of the Mandatory Purchase Date, $______________ principal amount of the Bonds will remain outstanding and the Bonds outstanding are required to be purchased pursuant to mandatory tender.

THE PREPAID ENERGY SALES AGREEMENT

Set forth below is a summary of certain provisions of the Prepaid Energy Sales Agreement relating to the purchase and sale of Energy during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Prepaid Energy Sales Agreement and accordingly is qualified by reference to the full text thereof.

Purchase and Sale

Under the Prepaid Energy Sales Agreement, the Energy Supplier agrees to deliver EPS Compliant Energy in the monthly quantities set forth in the Prepaid Energy Sales Agreement (the “Prepaid Energy”) during the Delivery Period and CCCFA has agreed to make a lump sum advance payment to the Energy Supplier for all of the cost of the Prepaid Energy to be delivered during the Delivery Period. The total quantity of expected Prepaid Energy to be delivered by the Energy Supplier during the initial Delivery Period is approximately __________ MWh.

For discussion of the Contract Price, see “THE POWER SUPPLY CONTRACT — Pricing Provisions.”

Delivery of Prepaid Energy

Assigned Energy. Assigned Energy delivered under the Prepaid Energy Sales Agreement shall be Scheduled for delivery to and receipt at the delivery point specified in the applicable Assignment Schedule.
(an “Assigned Delivery Point”). Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Schedule. At the start of the Delivery Period, the Project Participants will assign the Initially Assigned PPAs, as described under “ – Assignment of Power Purchase Agreements” below, for delivery of Assigned Energy equal to the Prepaid Energy required to be delivered by the Energy Supplier during the term of such assignments.

**Base Energy.** If the Assigned Energy for any month is less than the quantity of Prepaid Energy required to be delivered that month, the Energy Supplier is required to deliver Base Energy for remarketing under the terms of the Prepaid Energy Sales Agreement. Base Energy is not expected to be delivered during the Initial Reset Period.

**Title.** Title to and risk of loss of the Energy delivered under the Prepaid Energy Sales Agreement shall pass from the Energy Supplier to CCCFA at the applicable Delivery Point. The transfer of title and risk of loss for all Assigned Energy shall be set forth in the applicable Assignment Agreement.

**Aggregate Quantity.** The aggregate quantity of Energy to be delivered during the term of the Delivery Period varies based on the quantities of Prepaid Energy CCCFA has agreed to deliver to the Project Participants under the Power Supply Contracts. The approximate aggregate monthly quantities of Prepaid Energy to be delivered under the Prepaid Energy Sales Agreement during the Initial Reset Period range from a high of approximately __________ MWh in some months to a low of __________ MWh in other months.

**Assignment of Power Purchase Agreements**

Each Project Participant has assigned its respective Initial Assigned Rights and Obligations to MSCG. The Assigned PPAs pursuant to which the Initial Assigned Rights and Obligations have been assigned to MSCG are described as follows:

**East Bay Community Energy**

<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Location</th>
<th>Term of PPA</th>
<th>Type of Project</th>
<th>Commercial Operation Date</th>
<th>Capacity</th>
<th>Annual Prepaid Output</th>
</tr>
</thead>
</table>

**Silicon Valley Clean Energy**

<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Location</th>
<th>Term of PPA</th>
<th>Type of Project</th>
<th>Commercial Operation Date</th>
<th>Capacity</th>
<th>Annual Prepaid Output</th>
</tr>
</thead>
</table>
**PPA Payment Custodial Agreement.** The Project Participant, MSES and [________________], as custodian (in such capacity, the “Custodian”) have entered into a custodial agreement (the “PPA Payment Custodial Agreement”) to administer payments to be received by the sellers of Assigned Energy pursuant to the Assigned PPAs (the “PPA Sellers”).

**Failure to Deliver or Receive Energy**

**Assigned Quantities.** Neither CCCFA nor the Energy Supplier shall have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Quantities, except as described under the following subheading “—Assignment of Power Purchase Agreements.”

**Base Energy.** Because CCCFA will have prepaid for all Energy to be delivered under the Prepaid Energy Sales Agreement, the Energy Supplier will be required to pay CCCFA for all Base Energy that the Energy Supplier fails to deliver or CCCFA fails to receive for any reason, including events of *force majeure*. The amount the Energy Supplier is required to pay is equal to the quantity that was not delivered or received multiplied by a price that is determined in a manner depending upon the reason for such failure:

- If the Energy Supplier fails to deliver Base Energy for reasons other than *force majeure* or action or inaction by CCCFA, such quantity is referred to herein as a “Shortfall Quantity,” and the Energy Supplier is required to pay the higher of (a) the replacement price paid by CCCFA, or (b) the Day-Ahead Market Price applicable to the Hour and the Delivery Point for which the Shortfall Quantity arose, plus in either case an administrative fee of $0.50/MWh. In such event, CCCFA will cause the Project Participant to exercise Commercially Reasonable Efforts to mitigate damages paid by the Energy Supplier under the Prepaid Energy Sales Agreement.

- If CCCFA fails to receive all or any portion of Base Energy for reasons other than *force majeure*, for which CCCFA has previously issued a Remarketing Notice in accordance with the Prepaid Energy Sales Agreement, CCCFA shall be deemed to have issued a Deemed Remarketing Notice with respect to such portion.

- If either the Energy Supplier fails to deliver all or any portion of Base Energy or CCCFA fails to receive all or any portion of Base Energy due to events of *force majeure*, the Energy Supplier is required to pay the applicable Day-Ahead Market Price for such portion of Base Energy.

The “Day-Ahead Market Price” is the day-ahead market price for the delivery point specified in the Prepaid Energy Sales Agreement. See “THE POWER SUPPLY CONTRACT — Pricing Provisions.” **Base Energy are not expected to be delivered during the Initial Reset Period.**

**Energy Remarketing**

In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, the shortfall quantities will be delivered and remarkeed as Base Energy under the Prepaid Energy Sales Agreement. Any such remarketing of Base Energy will be treated as a private-business use sale, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To
the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

If a Project Participant experiences a loss of Energy load such that it has insufficient demand for the Prepaid Quantities, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

In the event of any expiration or termination of an Assigned PPA, the applicable Project Participant is required to use Commercially Reasonable Efforts to enter into a new limited assignment agreement relating to one or more additional PPAs, providing for the assignment of its rights to delivery of quantities of EPS Compliant Energy equivalent to the Prepaid Quantities for the term of such assignment. If no such replacement is available or is not accepted by MSCG, MSES is required to purchase such quantities for its own account, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. If the Project Participant has not made Commercially Reasonable Efforts to replace, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

**Remarketing Non-Default Termination Event**

MSES is required to use Commercially Reasonable Efforts to remarket Base Energy first in Qualifying Sales and next in non-private business sales. If MSES is unable to remarket Base Energy required to be remarkeated under the Prepaid Energy Sales Agreement in Qualifying Sales or in non-private business sales, it will purchase such Base Energy for its own account.

If after two years there are remaining remarketing proceeds from sales to purchasers other than Municipal Utilities or other qualified users, such balance will count against either a limit equivalent to a quantity of Energy, in MWh, equal to $15 million divided by a fixed price per MWh under the Prepaid Energy Sales Agreement (or such higher amount determined by Bond Counsel) or a limit of 10% of the original quantity of Energy purchased under the Prepaid Energy Sales Agreement (or such higher amount determined by Bond Counsel), depending on the status of the purchaser at the time the proceeds are received by CCCFA. Both limits apply in the aggregate over the term of the Prepaid Energy Sales Agreement. Once either limit has been exceeded, a Remarketing Non-Default Termination Event will be deemed to have occurred and the Prepaid Energy Sales Agreement will terminate automatically on the 90th day after such event unless CCCFA and MSES (a) (i) agree to reduce the daily quantity of gas purchased each month, (ii) take the actions necessary to remediate the necessary amount of the Bonds pursuant to their optional redemption provisions, and (iii) deliver to the Trustee amendments to the Prepaid Energy Sales Agreement, Power Supply Contracts and Commodity Swaps reflecting the corresponding reduction in Energy quantities, as well as revisions to certain schedules of the Indenture, an accountant’s verification, a Favorable Opinion of Bond Counsel and a Rating Confirmation, or (b) Bond Counsel otherwise provides an opinion that such event has not affected the tax-exempt status of the interest on the Bonds. The limits described above are mandated by certain tax requirements and are subject to increase based on revised tax
requirements as well as any bond remediations undertaken by CCCFA outside of a termination of the Prepaid Energy Sales Agreement.

**Payment Provisions**

The prepayment from CCCFA to MSES will be due prior to the inception of the term of the Prepaid Energy Sales Agreement. To the extent any other amount becomes due to MSES or CCCFA thereunder (for example, as a result of remarketing or failure to deliver by MSES), such amount will be due to the other party on or before the 25th or 22nd day, respectively, of the month following the month in which such amount accrues.

**Force Majeure**

Each of CCCFA and MSES are excused from their respective obligations to receive and deliver Energy under the Prepaid Energy Sales Agreement to the extent prevented by force majeure, defined generally as any cause not within the reasonable control of the party claiming an excuse to its obligations. This excuse to performance includes such events as natural disasters, curtailment of electricity transmission, government actions, and strikes. MSES is required to pay to CCCFA the Day Ahead Index Price with respect to any Prepaid Quantities not delivered due to a force majeure.

**Assignment**

Neither party may assign its rights under the Prepaid Energy Sales Agreement without the other party’s consent except:

(a) pursuant to the Indenture, CCCFA may transfer, sell, pledge, encumber or assign the Prepaid Energy Sales Agreement to the Trustee in connection with a financing arrangement; *provided* that CCCFA may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, CCCFA also assigns CCCFA Commodity Swap and CCCFA Custodial Agreement to the same assignee; and

(b) MSES may assign the Prepaid Energy Sales Agreement to an affiliate of MSES; *provided* that (i) the Morgan Stanley Guarantee continues to apply to the obligations of such assignee or (ii) the assignee provides CCCFA with a parent guarantee and a Rating Confirmation, which assignment constitutes a novation; and *provided* that MSES may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, MSES also assigns the MSES Commodity Swap and the MSES Custodial Agreement to the same assignee.

If either (a) MSES notifies CCCFA that the Morgan Stanley Guarantee will be terminated as of the end of the Initial Reset Period or the then-current Reset Period, (b) MSES is unable to provide, under the Re-Pricing Agreement, an estimated Available Discount for any Reset Period that is equal to or greater than the minimum discount under the Power Supply Contracts or (c) both (i) MSES has agreed under the Re-Pricing Agreement to provide an Available Discount equal to or greater than the Minimum Discount but for a Reset Period shorter than the entire remaining term to maturity of the Prepaid Energy Sales Agreement and (ii) CCCFA has identified a potential assignee that has agreed to provide an Available Discount equal to or greater than the Minimum Discount for a Reset Period equal to the entire remaining term to maturity...
of the Prepaid Energy Sales Agreement, then, at the request of CCCFA, MSES will reasonably cooperate with CCCFA to cause MSES’s interest (or the interest of MSES’s affiliate, if applicable) in the Prepaid Energy Sales Agreement, the Re-Pricing Agreement, the MSES Commodity Swap, the MSES Custodial Agreement and the Debt Service Account Investment Agreement, in each case with a term that extends past the then-current Interest Rate Period to which MSES or any affiliate is a party and all agreements related to any of the foregoing to be novated to a replacement seller. Any such novation requires a Rating Confirmation (for any Bonds required to be redeemed on the first Mandatory Purchase Date following the effective date of such novation) and the consent of the Commodity Swap Counterparty. Upon any such novation, neither MSES nor Morgan Stanley will have any obligations (contingent or otherwise) or be required to make any payment under any of the transaction documents described above, the Morgan Stanley Guarantee or otherwise, other than obligations that would have existed or payments that would have been required (or guaranteed) had the Prepaid Energy Sales Agreement terminated as of the end of the last Reset Period that commenced prior to such novation (the “Assignment Payment”).

Termination

CCCFA will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

• MSES’s failure to pay when due any amounts owed to CCCFA pursuant to the Prepaid Energy Sales Agreement within two business days after receiving notice of a late payment, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;

• MSES’s insolvency or bankruptcy;

• any representation or warranty made by MSES in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made; or

• any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results or would result in the performance of any obligation of MSES to deliver gas or CCCFA to receive gas under the Prepaid Energy Sales Agreement being prohibited or unlawful.

MSES will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

• CCCFA’s failure to pay when due any amounts owed to MSES within five business days after receiving notice of a late payment;

• CCCFA’s insolvency or bankruptcy;

• any representation or warranty made by CCCFA in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made;

• any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results
or would result in the performance of any obligation of MSES to deliver gas or CCCFA to receive gas under the Prepaid Energy Sales Agreement being prohibited or unlawful;

• if each of the Project Participants makes a Remarketing Election for a Reset Period; or

• if all of the Power Supply Contracts have been terminated or are otherwise no longer in effect.

The Prepaid Energy Sales Agreement will automatically terminate prior to the expiration of the term under the following circumstances:

• the failure to replace, within 120 days, either CCCFA Commodity Swap or the MSES Commodity Swap if CCCFA Commodity Swap is terminated for any reason or termination occurs automatically under CCCFA Commodity Swap as a result of an event of default or a termination event thereunder;

• the MSES Commodity Swap is terminated by the Commodity Swap Counterparty or termination occurs automatically as a result of an event of default where MSES is the defaulting party or a termination event where MSES is the sole affected party and, except for certain events of default and termination events for which the replacement period does not apply, either CCCFA Commodity Swap or the MSES Commodity Swap is not replaced within 120 days;

• the failure to replace, within 120 days, the MSES Commodity Swap or CCCFA Commodity Swap if the MSES Commodity Swap has been terminated for a reason other than as described above;

• a Failed Remarketing has occurred;

• both (a) Morgan Stanley has delivered a termination notice of the Morgan Stanley Guarantee, and (b) no novation of the Prepaid Energy Sales Agreement has been effected (as described under "THE PREPAID ENERGY SALES AGREEMENT—Assignment" above) prior to the end of the Initial Reset Period or the then-current Reset Period during which such termination notice was delivered, in which case the Prepaid Energy Sales Agreement will terminate as of the end of the Initial Reset Period or the then-current Reset Period, as applicable;

• the Morgan Stanley Guarantee ceases to be in full force or effect or is declared to be null and void or Morgan Stanley contests the validity or enforceability of the Morgan Stanley Guarantee; provided that, for avoidance of doubt, no such event will occur as a consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding; or

• the occurrence of a Remarketing Non-Default Termination Event (as described under “THE PREPAID ENERGY SALES AGREEMENT—Remarketing Non-Default Termination Event” above) and either (a) CCCFA and MSES fail to take the remedial actions required by the Prepaid Energy Sales Agreement or (b) CCCFA has not received an Opinion of Bond

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Draft Preliminary Offering Statement
Counsel to the effect that such event has not affected the tax-exempt status of the Bonds, in either case within 90 days after the Remarketing Non-Default Termination Event has occurred.

**Termination Payment**

If the Prepaid Energy Sales Agreement is terminated before the expiration of its stated term for any reason, MSES will be required to pay a scheduled Termination Payment to CCCFA. The Termination Payment schedule is generally based on the unamortized portion of the prepayment proceeds that were received by MSES. The amount of the Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that MSES and [____________], as Investment Agreement Provider, pay and perform their respective contract obligations when due. See APPENDIX I for a schedule showing the Termination Payment due by month during the Initial Interest Rate Period.

**Security**

MSES’s payment obligations under the Prepaid Energy Sales Agreement are unconditionally guaranteed by Morgan Stanley under the Morgan Stanley Guarantee.

The Morgan Stanley Guarantee will expire or terminate, as applicable, on the earliest of (i) the last day of the delivery period under the Prepaid Energy Sales Agreement, (ii) the earlier termination of the Prepaid Energy Sales Agreement, and (iii) the last day of the Initial Reset Period or any Reset Period if Morgan Stanley delivers a termination notice to CCCFA, provided that the Morgan Stanley Guarantee will continue in full force and effect with respect to MSES’s accrued payment obligations under the Prepaid Energy Sales Agreement. An election by Morgan Stanley to terminate the Morgan Stanley Guarantee (without a novation of the Prepaid Energy Sales Agreement and certain other contracts as described under “THE PREPAID ENERGY SALES AGREEMENT—Assignment”) is an automatic termination event under the Prepaid Energy Sales Agreement and will result in the extraordinary mandatory redemption of the Bonds as described under “THE BONDS—Redemption—Extraordinary Mandatory Redemption.”

**Receivables Purchase Provisions**

**General.** Pursuant to the Receivables Purchase Provisions of the Prepaid Energy Sales Agreement, MSES has agreed to purchase from CCCFA the rights to payment of net amounts owed by the Project Participants under the Power Supply Contracts (the “Put Receivables”). CCCFA is required to sell and MSES is required to purchase Put Receivables under the circumstances described below under “Put Receivables.” In addition, under certain circumstances described below under “Call Receivables,” MSES has the right to purchase the Call Receivables.

**Put Receivables.** Upon a payment default by any Project Participant under its Power Supply Contract, CCCFA shall put to MSES and MSES shall purchase Put Receivables with a face value up to the Maximum Monthly Amount with respect to each Project Participant. CCCFA shall exercise its put option by delivering notice (the “Put Option Notice”) to MSES on the 21st day of the Month (or, if the 21st is not a business day, then on the next business day of the Month) in which the relevant payment default occurs.
The Put Option Notice shall include a description of the Put Receivables (including the relevant Project Participant, aging information and face amount of the Put Receivables) to be sold to MSES (collectively, the “Put Identified Receivables”).

“Maximum Monthly Amount” means, with respect to each Project Participant, (i) if the Outstanding Put Receivables in respect of such Project Participant exceeds zero, the Maximum Amount for such Project Participant, and (ii) otherwise the Maximum Amount less the Maximum Amount Holdback.

“Maximum Amount” means, with respect to each Project Participant, the amount set forth on a schedule attached to the Receivables Purchase Provisions (which amount has been calculated to equal the maximum consecutive two months of payments by each Project Participant, assuming a Contract Price of $[___]/MWh, reduced by the amount of each purchase of Put Receivables by MSES with respect to a Project Participant, and reinstated to the extent of payments received by MSES from such Project Participant in respect of such Put Receivables).

“Maximum Amount Holdback” means, with respect to each Project Participant, the amount such Project Participant would have been required to pay in the Month following an initial payment default under its Power Supply Contract for Gas delivered during the Month in which an initial payment default occurs if the Contract Price for such Month had been determined using an Index Price (as defined under its Power Supply Contract) for such Month equal to the Fixed Price (as defined under the CCCFA Commodity Swap) for such Month.

“Outstanding Put Receivables” means, in respect of any Project Participant, Put Receivables that have been sold to MSES pursuant to the Receivables Purchase Provisions, together with any interest accrued thereon pursuant to the Receivables Purchase Provisions, less any such Put Receivables and interest thereon that has been previously paid to or repurchased from MSES.

Call Receivables. If (i) one or more Project Participants defaults on its obligation to make any payment under its Power Supply Contract, and (ii) as of the next business day after the payment default by a Project Participant, a Swap Payment Deficiency is projected to exist with respect to CCCFA Commodity Swap, then on such business day, CCCFA shall deliver a written offer (a “Call Receivables Offer”) to sell to MSES sufficient Call Receivables (such amount, less any undisputed amounts owed by CCCFA to the Project Participants, the “Call Receivables Amount”) to fund the Swap Payment Deficiency. No later than one business day following MSES’s receipt of a Call Receivables Offer, MSES may elect, in its discretion, to purchase the Call Receivables referenced in the Call Receivables Offer by delivering a written notice (a “Call Option Notice”) to CCCFA or the Trustee of MSES’s intent to purchase such Call Receivables. If MSES does not deliver a Call Option Notice to the Trustee on or before the business day following MSES’s receipt of a Call Receivables Offer, MSES will be deemed to have elected not to purchase the referenced Call Receivables. The Trustee’s obligation to offer to sell such Call Receivables is subject to the condition that all of the representations and warranties made by MSES at the time of execution and delivery of the Prepaid Energy Sales Agreement be true and correct on each day that the Trustee is required to offer to sell Call Receivables.
THE RE-PRICING AGREEMENT

Set forth below is a summary of certain provisions of the Re-Pricing Agreement. This summary does not purport to be a complete description of the terms and conditions of the Re-Pricing Agreement and accordingly is qualified by reference to the full text thereof.

General

On the Initial Issue Date of the Bonds, CCCFA and the Energy Supplier will enter into a Re-Pricing Agreement (the “Re-Pricing Agreement”), which provides for (a) the determination of Energy Delivery periods subsequent to the initial Delivery Period that corresponds to the Initial Interest Rate Period on the Bonds (“Reset Periods”) and (b) the calculation of the amount of the discount (as a percentage) that is available (the “Available Discount Percentage”) for sales of Energy to the Project Participant during each Reset Period.

The initial delivery period under the Prepaid Energy Sales Agreement begins on the first day of ______________ 20__ and ends on the last day of ______________ 20__ and the first Reset Period is expected to begin on the first day of ______________ 20__.

Remarketing Election

In the event that the Available Discount for any Reset Period is less than the Minimum Monthly Discount specified in the Power Supply Contract, the Project Participant may elect not to take Prepaid Energy during the Reset Period and to have Base Energy remarked for the duration of the Reset Period (a “Remarketing Election”) by giving notice of such election to CCCFA, the Energy Supplier and the Trustee. Any Base Energy covered by a Remarketing Election will be remarked in accordance with the provisions of the Indenture and the Prepaid Energy Sales Agreement. In the event that both Project Participants make a Remarketing Election with respect to any Reset Period, MSES will have the option to terminate the Prepaid Energy Sales Agreement. If MSES exercises this option, the Termination Payment will be payable under the Prepaid Energy Sales Agreement. See “THE PREPAID ENERGY SALES AGREEMENT — Remarketing” and “— Early Termination.”

THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY

Set forth below is certain information regarding the Energy Supplier, MSCG and Morgan Stanley that has been obtained from such persons and other sources believed to be reliable. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Energy Supplier, MSCG or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.

MSES. The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The FERC has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services. Like all other natural gas marketers, the Energy Supplier has blanket authorization to sell wholesale Energy at market-based rates. The Energy Supplier is not registered with the CFTC in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the Energy Supplier Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees described herein.
MSCG. MSCG is a direct, wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which is a direct, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC. The payment obligations of MSCG under the Debt Service Account Investment Agreement are guaranteed by Morgan Stanley under the Morgan Stanley Investment Agreement Guarantee.

Morgan Stanley. Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides a wide variety of products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley is a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the U.S., and its principal offices in London, Tokyo, Hong Kong and other world financial centers. Morgan Stanley’s principal executive offices are at 1585 Broadway, New York, New York 10036, and its telephone number is (212) 761-4000.

The senior unsecured long-term debt of Morgan Stanley is rated “A1” by Moody’s, “BBB+” by S&P, and “A” by Fitch.

Morgan Stanley has provided the Morgan Stanley Guarantee to CCCFA pursuant to which it guarantees the Energy Supplier’s payment obligations under the Prepaid Energy Sales Agreement and the Interest Rate Swap. Morgan Stanley has also provided the Morgan Stanley Commodity Swap Guarantee to the Commodity Swap Counterparty pursuant to which it guarantees the Energy Supplier’s payment obligations to the Commodity Swap Counterparty under the Energy Supplier Commodity Swap. Under no circumstance is the Energy Supplier or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.

THE POWER SUPPLY CONTRACTS

Set forth below is a summary of certain provisions of the Power Supply Contracts during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Power Supply Contracts and is qualified by reference to the full text of the Power Supply Contracts.

General

Under each Power Supply Contract, CCCFA has agreed to sell and deliver to the Project Participant, and the Project Participant has agreed to purchase and receive from CCCFA at the delivery point, quantities of EPS Compliant Energy, which shall be comprised of Assigned Energy and other EPS Compliant Energy delivered to CCCFA by the Energy Supplier under the Prepaid Energy Sales Agreement.

Each Power Supply Contract will remain in full force and effect for a primary term ending at the end of the Delivery Period under the Prepaid Energy Sales Agreement; provided, however, that if the Prepaid Energy Sales Agreement is terminated, the Power Supply Contract will terminate on the Termination Date.
For information regarding the Project Participants, see APPENDIX A.

**Pricing Provisions**

**Contract Price.** For each MWh of Prepaid Energy delivered to Purchaser, Purchaser shall pay CCCFA the applicable Contract Price. “Contract Price” means (i) for Assigned Energy during the Initial EPS Energy Period, (A) the Assigned Fixed Price minus (B) the Monthly Discount; and (ii) for Assigned Energy after the Initial EPS Energy Period, (A) the Day-Ahead Average Price for the Month in which Energy is delivered, minus (B) the Monthly Discount. The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products. The “Initial EPS Energy Period” is defined in the Prepaid Energy Sales Agreement as the period corresponding the term of the assignments made by the Project Participants under the Initially Assigned PPAs. The “Assigned Fixed Price” during such period is defined as the fixed price payable under the applicable Assigned PPA.

If Base Energy is required to be delivered and remarketed pursuant to the Prepaid Energy Sales Agreement, the Energy Supplier will remarket such Base Energy at a price, inclusive of applicable fees, at a price not less than the Contract Price. See “THE PREPAID ENERGY SALES AGREEMENT — Energy Remarketing.”

Through the Clean Energy Project, the Project Participants anticipate realizing a discount to market Energy prices. No assurance can be given as to the total actual discounts the Project Participants will realize.

**Assignment of Power Purchase Agreements**

**General.** Concurrently with the execution of the Power Supply Contract, the Project Participants will assign the Initial Assigned Rights and Obligations to MSCG and MSCG will deliver the Assigned Energy to MSES for delivery under the Prepaid Energy Sales Agreement.

Commencing one year prior to the expiration of any EPS Energy Period, or otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, each Project Participant shall exercise commercially reasonable efforts to assign the Assigned Rights and Obligations under one or more Assigned PPAs, and MSCG has the right to consent to, pursuant to which the Project Participant is purchasing EPS Compliant Energy and associated attributes, and MSCG will be obligated to sell and deliver Assigned Energy it receives under all Assigned Rights and Obligations to the Energy Supplier pursuant to the Energy Management Agreement, and the Energy Supplier will be obligated to deliver such EPS Compliant Energy and associated attributes to CCCFA pursuant to the Prepaid Energy Sales Agreement.

**Failure to Obtain EPS Compliant Energy.** To the extent an EPS Energy Period terminates or expires and the Project Participant and the Energy Supplier have been unable to obtain EPS Compliant Energy for delivery, then the Energy Supplier shall remarket the Base Energy pursuant to the Prepaid Energy Sales Agreement, the obligations of the Project Participant and the Energy Supplier described under this heading shall continue to apply and the Project Participant may not make any new commitment to purchase Priority Energy during such a remarketing.
Billing and Payment

Not later than ten days following the end of the month during the Delivery Period, CCCFA must provide a monthly billing statement of the amount due for Energy. The due date for payment by the Project Participant will be (i) the 20th day of the month following the month of delivery or (ii) the 10th day following the Project Participant’s receipt of the billing statement (or if either of such days is not a business day, the preceding business day). If the Project Participant disputes the appropriateness of any charge or calculation in any billing statement, the Project Participant, within the time provided for payment, must notify CCCFA of the existence of and basis for such dispute and must pay all amounts billed by CCCFA, including any amounts in dispute. If it is ultimately determined that the Project Participant did not owe the disputed amount, CCCFA must pay the Project Participant the disputed amount plus interest.

Annual Refunds

CCCFA has agreed to provide annual refunds to the Project Participant from amounts available for distribution pursuant to the Indenture. In determining the amount of such refunds, CCCFA may reserve such funds as may be required under the terms of the Indenture or as it deems reasonably necessary and appropriate to cover anticipated costs and expenses to be incurred in the next succeeding bond year, with certain limitations.

Covenants of the Project Participant

Operating Expense. The Project Participant covenants (a) to make the payments on its part due under the Power Supply Contract from the revenues of its electric utility system, and only from such revenues, as an item of operating expenses and a cost of purchase Energy and (b) that in any future bond issue, swap, or other financial transaction undertaken in connection with its electric system, it will not pledge or encumber its revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under the Power Supply Contract.

Maintenance of Rates and Charges. The Project Participant has covenanted and agreed that it will establish, maintain, and collect rates and charges for its electric utility system so as to provide revenues sufficient, together with all available electric system revenues, to enable it to pay to CCCFA all amounts payable under its Power Supply Contract and to maintain required reserves.

Qualifying Use. The Project Participant has agreed that it will (a) provide such information with respect to its electric utility system as may be requested by CCCFA in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as tax counsel to CCCFA may provide from time to time that are reasonably necessary to enable CCCFA to maintain the tax-exempt status of interest on the Bonds. Without limiting the foregoing, the Project Participant has further agreed to sell or otherwise use the Energy purchased under the Power Supply Contract (a) in a “qualifying use” as defined in the applicable U.S. Treasury Regulation, (b) in a manner that will not result in any private business use of that Energy within the meaning of Section 141 of the Code, and (c) consistent with its Federal Tax Certificate (collectively, the “Qualifying Use Requirements”).

In the event that the Project Participant remarkets the Energy it receives under the Power Supply Contract in a manner that does not comply with the Qualifying Use Requirements due to fluctuations in its commodity needs, the Project Participant agrees to exercise commercially reasonable efforts to use the
proceeds of such remarketing to purchase Energy (other than Priority Energy, which are described below) for use in compliance with such Requirements. The Project Participant further agrees to provide quarterly reports to CCCFA with respect to the quantity of proceeds from sales of Energy that were sold in a transaction that does not comply with the Qualifying Use Requirements and that have not been remediated by applying such proceeds to purchase Energy that are used in compliance with the Qualifying Use Requirements. The amount of any such unremediated proceeds will be entered on the ledger system maintained by J. Aron under the Energy Purchase, Sale and Service Agreement.

**Priority Energy.** The Project Participant agrees to purchase and receive the Base Energy and Assigned Quantities to be delivered under the Power Supply Contract (a) in priority over and in preference to all other Energy available to it that are not Priority Energy; and (b) on at least a pari passu and non-discriminatory basis with other Priority Energy. For purposes of this covenant and during the Delivery Period, “Priority Energy” means Base Energy and Assigned Quantities that (a) the Project Participant is obligated to take under a long-term agreement or (b) with respect to Energy, Energy that is generated using capacity that was constructed using the proceeds of tax-exempt bonds, notes, or other obligations.

**Delivery Points; Title and Risk of Loss**

Assign Energy. Assigned Energy delivered under the Power Supply Contract shall be Scheduled for delivery to and receipt at the applicable Assigned Delivery Point specified in the applicable Assignment Schedule. All other Assigned Energy will be delivered pursuant to the terms of the applicable Assignment Agreement. Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Title. Title to and risk of loss of the Prepaid Energy delivered under the Power Supply Contract shall pass from the CCCFA to the Project Participant at the applicable Assigned Delivery Point. The transfer of title and risk of loss for Assigned Energy shall be in accordance with the applicable Assignment Agreement.

**Failure to Perform.**

To the extent that quantities of Assigned Energy are not delivered to a Project Participant for reasons other than force majeure, equivalent quantities of Base Energy are required to be remarkedeted by MSES at a net price not less than the Contract Price. Neither the Project Participant nor CCCFA has any liability to one another for any failure to take or deliver Assigned Energy, except as described under “—Assignment of Power Purchase Agreements.”

**Remarketing of Energy**

In the event the Project Participant does not require all or any portion of the Base Energy or Assigned Quantities to meet its requirements for Energy for any hour that it is obligated to purchase under its Power Supply Contract as a result of (i) insufficient demand by its retail customers, or (ii) a change in Law, the Project Participant may request that the Energy Supplier sell such portion of Base Energy or Assigned Energy to (a) another Municipal Utility or (b) if necessary, another purchaser. Under the Prepaid Energy Sales Agreement, CCCFA arranges for sales through the Energy Supplier in accordance with the remarketing provisions and procedures set forth in that agreement. If the Energy Supplier successfully makes such a sale or sales, CCCFA must credit against the amount owed by the Project Participant to
CCCFA the amount received from the Energy Supplier, such credit not to exceed the Contract Price for the Energy so sold. See “THE PREPAID ENERGY SALES AGREEMENT — Energy Remarketing.”

*Force Majeure*

Except with regard to a party’s obligation to make payments under the Power Supply Contract, neither party shall be liable to the other for failure to perform its obligations under the Power Supply Contract to the extent such failure was caused by an event of “Force Majeure” (as defined in APPENDIX B).

*Default*

Each of the following is a default under the Power Supply Contract:

(a) Any representation or warranty made by a party in the Power Supply Contract shall prove to have been incorrect in any material respect when made; and

(b) A party fails to perform, observe or comply with any covenant, agreement or term contained in the Power Supply Contract, and such failure continues for more than thirty days (in the case of the CCCFA) or more than fifteen days (in the case of the Project Participant) following the receipt of written notice thereof.

In addition, each of the following is a default by the Project Participant under the Power Supply Contract:

(a) Failure by the Project Participant to pay when due any amounts owed to CCCFA under the Power Supply Contract, subject to certain grace periods;

(b) The insolvency or bankruptcy of the Project Participant; and

(c) The Project Participant fails to establish, maintain, or collect rates or charges adequate to provide revenues sufficient to enable the Project Participant to pay all amounts due to CCCFA under the Power Supply Contract.

Upon the occurrence of a default by the Project Participant described in (b) above, the Power Supply Contract will automatically terminate and all amounts due to the non-defaulting party will be immediately due and payable. Upon the occurrence of the other defaults described above, the non-defaulting party may terminate the Power Supply Contract and/or declare all amounts due to it to be immediately due and payable. During the existence of a default, the non-defaulting party may exercise all other rights and remedies available to it at law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of the Power Supply Contract.

In addition to the remedies described above, during the existence of any default by the Project Participant, CCCFA may suspend its performance under the Power Supply Contract and discontinue the supply of all or any portion of the Energy otherwise to be delivered to the Project Participant under the Power Supply Contract.

If CCCFA exercises its right to discontinue Energy deliveries to the Project Participant, such service may only be reinstated, as determined by CCCFA, upon (a) payment in full by the Project Participant;
Participant of all amounts then due and payable under its Power Supply Contract and (b) unless otherwise agreed to by CCCFA, payment in advance by the Project Participant at the beginning of each month (for such time period as CCCFA deems appropriate) of amounts estimated by CCCFA to be due from the Project Participant for the future delivery of Energy for such month. If the Project Participant fails to accept the Energy tendered, CCCFA has the right to sell the Energy to third parties.

In the event of any default, the non-defaulting party may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance.

Assignment

The provisions of the Power Supply Contract are binding on the successors and assigns of such contract. Neither party may assign the Power Supply Contract to another party without the prior written consent of the other party, except that CCCFA may assign its interests to secure its obligations under the Indenture. Prior to assigning all or any part of its interest in the Power Supply Contract, the Project Participant is required to deliver to CCCFA a Rating Confirmation from each rating agency then rating the Bonds. Any applicable Assignment Agreement will terminate concurrent with the assignment of the Power Supply Contract.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

[To be updated and confirmed]

General

CCCFA is a joint powers authority formed pursuant to the Act and the joint powers agreement (“the JPA Agreement”) made among those public agencies which are its members. CCCFA was incorporated and organized in 2021 pursuant to by the members thereof, those being the Project Participant (Marin Clean Energy), Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (each, a “Founding Member” and, together with any members which may later be added as parties to the JPA Agreement, a “Member”).

Each Member is a community choice aggregator, and a public agency as defined in the Act, which operates a community choice aggregation program with the authority to group retail Energy customers to solicit bids, broker, and contract for Energy and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of Energy and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs.

CCCFA was formed for, among other purposes, the purpose of financing energy prepayments which can be financed with tax advantaged bonds for the benefit of its Members.

Powers and Authority

Under the provisions of the Act, CCCFA has all of the powers common to the Members, and any and all power in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations, including: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of
any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations (a “Prepayment Project”). CCCFA shall have the power to issue, incur, sell and deliver bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects.

Under the provisions of the JPA Agreement and the Act, CCCFA has (among others) the following powers:

(a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;

(b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);

(c) to employ agents and employees;

(d) to acquire, manage, maintain or operate any building, works or improvements;

(e) to acquire, hold, lease or dispose of property;

(f) to incur debts (including without limitation through the issuance or incurrence of bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);

(g) to sue and be sued in its own name;

(h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;

(i) to receive, collect, invest and disburse moneys;

(j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

(k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;

(l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of the JPA Agreement.

The JPA Agreement shall continue in full force and effect until terminated as provided in therein; provided, however, the JPA Agreement cannot be terminated while either (a) any bonds of CCCFA,
including the Bonds, remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any bonds.

**Governance and Management**

*Board of Directors.* CCCF is governed by a Board of Directors (the “Board”) consisting of one director for each Founding Member. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA. The Board may appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers. The General Manager would be responsible for the day-to-day operation and management of CCCFA. The names of the current directors of CCCFA are listed on the roster page at the front of this Official Statement.

*Management.* CCCFA’s current management team and their backgrounds are set forth below.

[Bios to come]

**Future CCCFA Projects**

[To be updated] [CCCFA has no other bonds outstanding but may issue future bonds to purchase Prepaid Energy supplies for sale to participating municipal utilities, with the revenues from such sales pledged to the payment of such bonds. Such revenues will not be pledged, nor may such revenues be used, to pay amounts due with respect to the Bonds.

In furtherance of its corporate and public purposes, CCCFA intends to acquire and finance supplies of Energy on a prepaid basis for sale to __________ and other public utility systems. CCCFA is currently developing additional Clean Energy Projects under transaction and financing structures that are expected to be generally similar to the structure of the Clean Energy Project. CCCFA can give no assurance as to the timing or terms of these projects or that they will be completed. A range of factors that are outside of the control of CCCFA, including the final negotiation of transaction documents, the approval of commodity supply contracts by the prospective project participants, changes in market prices and rates, the receipt of bond ratings, and other factors could result in these transactions not being completed.

Any additional Clean Energy Projects that may be undertaken by CCCFA will be separate and distinct transactions, and the bonds issued to finance these projects will be payable solely from the commodity sales and other revenues pledged for their payment. In no event will the Revenues and Trust Estate pledged to the payment of the Bonds be used to pay any other bonds of CCCFA.]

**Separate Obligations**

THE BONDS, ANY FUTURE BONDS THAT MAY BE ISSUED BY CCCFA AND ANY FUTURE CONTRACTS THAT CCCFA MAY ENTER INTO TO ACQUIRE ADDITIONAL ENERGY OR ENERGY ARE AND WILL BE SEPARATE AND DISTINCT OBLIGATIONS OF CCCFA. ANY FUTURE BONDS OR CONTRACTS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES PLEDGED BY THE INDENTURE TO THE PAYMENT OF THE BONDS, AND THE BONDS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES DERIVED FROM ANY FUTURE PROJECT, CLEAN ENERGY PROJECT OR CONTRACT OF CCCFA.
Limited Liability

CCCFA DOES NOT HAVE THE POWER TO LEVY AD VALOREM PROPERTY TAXES. ALL BONDS ISSUED BY CCCFA ARE PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM ITS ACTIVITIES PURSUANT TO ITS STATUTORY PURPOSES AND POWERS AND IN ACCORDANCE WITH THE APPLICABLE FINANCING DOCUMENTS. THE BONDS ARE PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE PLEDGED PURSUANT TO THE INDENTURE.

COMMUNITY CHOICE AGGREGATORS

Limited Liability.

Section 331.1 of the Public Utilities Code provides for the establishment of “community choice aggregators” (a “CCA”). A CCA may be established by any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a community-wide Energy buyers’ program, and by any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Joint Powers Act, provided in either case that the entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003. “Local publicly owned electric utility” means a municipality or municipal corporation operating as a “public utility” and certain municipal utility districts, public utility districts, irrigation districts, or joint powers authorities that include one or more of these agencies and that owns generation or transmission facilities or furnishes electric services over its own or its members’ electric distribution systems.

Community Choice Service Model.

Once a community forms or joins a CCA, the CCA is the default energy provider in that community. The CCA procures energy for customers in that community, but the investor-owned utility for that community continues to provide transmission, distribution and billing services to customers. Revenues from the sale of energy by the CCA are delivered by the investor-owned utility to the CCA as they are received over the course of the billing period.

Service Contract Requirements and Registration with the Public Utilities Commission.

CCAs are required to have an operating service agreement with the applicable investor-owned utility prior to furnishing electric service to consumers within its jurisdiction. The service agreement must include performance standards that govern the business and operational relationship between the CCA and the investor-owned utility. CCAs are also required to register with the California Public Utilities Commission (the “PUC”), which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters. Once notified of a CCA program, the applicable investor-owned utility is required to transfer all applicable accounts to the CCA within a 30-day period from the date of the close of the utility’s normally scheduled monthly metering and billing process.

Participation in a CCA is voluntary. Each local government seeking to form or join a CCA must adopt an appropriate authorizing resolution or ordinance. When a community forms or joins a CCA, customers are given advance notice and have the choice to opt-out of the CCA program prior to or after transition to the CCA, and instead receive Energy from the applicable investor-owned utility. Customers that do not opt-out are automatically enrolled in the program.

Regulatory Compliance.

CCAs are “load-serving entities” and as such are required to comply with the renewable portfolio standards and reliability standards established by the PUC and the California Energy Commission (the “CEC”) and file integrated resource plans and other periodic reports with the PUC and the California Energy Commission.

Cost Recovery Related to Transfer of Customers to a CCA.

Although investor-owned utilities do not purchase power for CCA customers, they continue to deliver the power. Investor-owned utilities also have the obligation to provide electric service to customers that opt out of CCA service as the “provider of last resort.” In order to compensate investor-owned utilities for investments in power generation and long-term power purchase contracts associated with the loss of customers to CCAs, the PUC has established a “power charge indifference adjustment” (the “PCIA”) applicable to CCA customers. The PCIA is calculated by taking the difference between (i) the “actual portfolio cost” related to utility’s power procurement (e.g., utility-owned generation and purchased power), and (ii) the “market value of the portfolio,” which is measured by the Market Price Benchmark (the “MPB”) and the megawatt hours of generation.

The MPB is based on a PUC approved methodology for calculating the current market cost of renewables and natural gas-fueled power. If the investor-owned utility’s actual portfolio cost is above-market value, the departing load customers pay their share of the difference in the form of a PCIA based on their power consumption. The amount of the PCIA applicable to a CCA customer depends on when a customer left the investor-owned utility and what the investor-owned utility’s portfolio was at the time. Each departing load customer pays the assigned “vintage PCIA.” For example, a customer who departed in 2019 pays the “2019 vintage PCIA” which only includes the above market costs of pre-2020 vintage power procured by the investor-owned utility.

In addition to PCIA charges, CCA customers are required to pay certain other “non-bypassable departing load charges”, including a nuclear decommissioning charge, a public purpose charge and a cost allocation charge to pay for new resources needed for ongoing system reliability.
THE COMMODITY SWAPS

Set forth below is a summary of certain provisions of the Commodity Swaps. This summary does not purport to be a complete description of the terms and conditions of the Commodity Swaps and accordingly is qualified by reference to the full text of the Commodity Swaps.

General

CCCFA has entered into the CCCFA Commodity Swap under which, following the Initial EPS Energy Period, CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for notional quantities that correspond to the quantities of Prepaid Energy under the Prepaid Energy Sales Agreement. Under the CCCFA Commodity Swap, for each calendar month that the relevant floating price of Energy is greater than the fixed price specified in an CCCFA Commodity Swap, CCCFA will be obligated to pay to the Commodity Swap Counterparty an amount equal to (x) the difference between the floating price and the fixed price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the fixed price specified in the CCCFA Commodity Swap is greater than the relevant floating price of Prepaid Energy for a month, the Commodity Swap Counterparty will be obligated to pay CCCFA an amount equal to (x) the difference between the fixed price and floating price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the relevant floating price for a calendar month is equal to the specified fixed price, no payment will be owed by either party to the other under the CCCFA Commodity Swaps.

The Energy Supplier has entered into a comparable Energy Supplier Commodity Swap with the same Commodity Swap Counterparty under which the Energy Supplier pays a fixed Energy price and receives a floating Energy price for the same notional quantities at the same pricing points.

Each Commodity Swap has an initial term that commences on day following the Initial EPS Energy Period and extends for two calendar months. The Commodity Swaps have rolling two-month terms that renew automatically upon the payment due date of each monthly net settlement amount due thereunder through the term of the Delivery Period under the Prepaid Energy Sales Agreement, unless a Termination Date occurs under the Prepaid Energy Sales Agreement.

Form of Commodity Swaps

The Commodity Swaps have been entered into as a confirmation under a 2002 ISDA Master Agreement with certain amendments and elections under the Master Agreement that have been agreed to by the parties.

Payment

For each month of scheduled deliveries and notional amounts following the Initial EPS Energy Period, each party with a net obligation under a Commodity Swap (based on the relative values of the fixed price and relevant index prices) will pay that net obligation to the other party. Payments, if any, under the Commodity Swaps are due in the calendar month following the month to which the applicable day-ahead market prices relate, on the 24th day of the month (or preceding business day) in the case of the Energy
Supplier Commodity Swap and on the 25th day of the month (or next business day) in the case of the CCCFA Commodity Swap.

Early Termination

Each of the Commodity Swaps will be subject to early termination under certain circumstances. Early termination can be triggered automatically or upon the election by the non-defaulting party as summarized below.

No settlement or other termination payment (other than Unpaid Amounts) will be due to any party as a result of any early termination of any Commodity Swap.

Automatic Termination of Commodity Swaps. Each of the following events would result in the automatic termination of the CCCFA Commodity Swap and the Energy Supplier Commodity Swap:

- the termination of the Prepaid Energy Sales Agreement for any reason, in which case the Commodity Swaps will terminate automatically on such date;
- a party’s failure to pay amounts when due under an CCCFA Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within three business days after notice; and
- delivery by CCCFA of a notice of termination of an CCCFA Commodity Swap results in the automatic termination of the Energy Supplier Commodity Swap, and delivery by the Energy Supplier of a notice of termination of an Energy Supplier Commodity Swap results in the automatic termination of the CCCFA Commodity Swap.

Elective Termination of CCCFA Commodity Swap. Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate a CCCFA Commodity Swap if it is not cured within the applicable cure period:

- a party becomes subject to certain insolvency events in the manner specified in the CCCFA Commodity Swap;
- a credit support default with respect to a Commodity Swap Counterparty;
- a reduction below certain specified minimum ratings in the credit rating assigned by the applicable rating agency to the senior, unsecured long-term debt obligations (not supported by third party credit enhancements) of the Commodity Swap Counterparty (the “Counterparty Credit Rating”);
- amendment of the Indenture in breach of the Commodity Swap Counterparty’s consent rights thereunder;
- the amendment, without the Commodity Swap Counterparty’s consent, of certain provisions of the Prepaid Energy Sales Agreement relating to the termination or assignment thereof, or that would affect termination of the Commodity Swap; and
• CCCFA fails to promptly exercise its right to suspend all commodity deliveries under a Power Supply Contract to any Project Participant that fails to pay when due any amounts owed to CCCFA thereunder.

**Elective Termination of the Energy Supplier Commodity Swaps.** Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate an Energy Supplier Commodity Swap if it is not cured within the applicable cure period:

• if a party becomes subject to certain insolvency events in the manner specified in the Energy Supplier Commodity Swap;

• a credit support default with respect to the Commodity Swap Counterparty or the Energy Supplier;

• any reduction in the Counterparty Credit Rating (as defined above) below certain specified minimum ratings;

• the amendment, without the Commodity Swap Counterparty’s consent, of (a) certain provisions of the Prepaid Energy Sales Agreement relating to the termination or assignment thereof, or that would affect terminations of the Commodity Swaps or (b) certain provisions of the Receivables Purchase Provisions relating to the purchase of Receivables by the Energy Supplier; and

• a party’s failure to pay amounts when due under an Energy Supplier Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within one business day after notice.

**Other Listed Events.** The Commodity Swaps contain other listed events (including breach or repudiation, misrepresentation, illegality and certain tax and credit events) that do not give CCCFA, the Energy Supplier or a Commodity Swap Counterparty the right to designate an early termination date, but which permit the non-defaulting party or the affected party to pursue such equitable remedies, including specific performance, as may be available.

**Custodial Agreements**

The Energy Supplier will enter into a Custodial Agreement, dated as of the Initial Issue Date (each, an “Energy Supplier Custodial Agreement”), with the Commodity Swap Counterparty and [________________], as Trustee and as custodian (in such capacity, the “Custodian”), to administer payments under the Energy Supplier Commodity Swaps. CCCFA will enter into a Custodial Agreement, dated as of the Initial Issue Date (each, an “CCCFA Custodial Agreement,” and together with the Energy Supplier Custodial Agreement, the “Custodial Agreements”), with the Commodity Swap Counterparty and the Custodian, to administer payments under the CCCFA Commodity Swap. The Custodial Agreements contain provisions designed to mitigate risks to CCCFA and Bondholders resulting from a failure of the Commodity Swap Counterparty to make payments to CCCFA under the CCCFA Commodity Swap, and mitigate risks to the Energy Supplier resulting from a failure of the Commodity Swap Counterparty to make payments to the Energy Supplier under the Energy Supplier Commodity Swap.
Payments made by the Energy Supplier under the Energy Supplier Commodity Swap will be made to a custodial account maintained by the Custodian under the Energy Supplier Custodial Agreements. Such amounts will not be released until the Custodian has received confirmation that the amount payable to CCCFA by the Commodity Swap Counterparty under the CCCFA Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under an CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that the Energy Supplier paid under the Energy Supplier Commodity Swap (which such amount is held in custody) to the Trustee for deposit in the Revenue Fund and that payment will be treated as a Commodity Swap Receipt. Additionally, if the Energy Supplier Commodity Swap terminates, the Energy Supplier will continue to make payments to the custodial account as if such Energy Supplier Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be used to ensure that CCCFA receives deposits in the Revenue Fund as described in the preceding sentence in the event that the Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap.

Payments made by CCCFA under the CCCFA Commodity Swap will be made to a custodial account maintained by the Custodian under the CCCFA Custodial Agreement. The amount in the custodial account will not be released until the Custodian has received confirmation that the amount payable to the Energy Supplier by the Commodity Swap Counterparty under the Energy Supplier Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under the Energy Supplier Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that CCCFA paid under the CCCFA Commodity Swap (which such amount is held in custody) to the Energy Supplier. Additionally, if a CCCFA Commodity Swap terminates, CCCFA will continue to make payments to the custodial account as if the CCCFA Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be withdrawn by the Custodian and paid to the Energy Supplier.

THE COMMODITY SWAP COUNTERPARTY

Set forth below is certain information regarding the Commodity Swap Counterparty. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Commodity Swap Counterparty obligated to pay any amount owed in respect of the Bonds.

[TO COME]

CONTINUING DISCLOSURE

CCCFA. CCCFA will enter into a Continuing Disclosure Undertaking (the “Undertaking”) for the benefit of the beneficial owners of the Bonds to send certain information annually and to provide notice of certain events to the MSRB’s EMMA system for municipal securities disclosures, pursuant to the requirements of Section (b)(5) of Rule 15c2-12 (“Rule 15c2-12”) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.
A failure by CCCFA to comply with the Undertaking will not constitute an event of default under the Indenture or the Bonds and Beneficial Owners of the Bonds shall only be entitled to the remedies for any such failure described in the Undertaking. A failure by CCCFA to comply with the Undertaking must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price.

The Undertaking and commitments of CCCFA described under this heading and in APPENDIX D hereto to furnish the above-described documents and information are agreements and commitments solely of CCCFA, and the Underwriter has no responsibility to ensure that CCCFA complies with any such Undertaking or commitment. In addition, the Underwriter makes no representation that any such documents or information will be furnished, or that any such documents or information so furnished will be accurate or complete, or sufficient for the purposes for which they may be used.

CCCFA has not previously entered into a continuing disclosure undertaking pursuant to Rule 15c2-12. [CCCFA has adopted a written policy that sets forth procedures for compliance with the federal tax and continuing disclosure requirements applicable to its bonds. The policy includes, among other things, procedures that are intended to promote CCCFA’s compliance with the Undertaking.]

Project Participants. Pursuant to the Power Supply Contracts, the Project Participants have agreed to provide to CCCFA certain annual operating and financial information, which information will enable CCCFA to comply with the Undertaking. Failure of a Project Participant to provide such information is not a default under its Power Supply Contract, but any such failure entitles CCCFA to take such actions and to initiate such proceedings as shall be necessary to cause the Project Participant to comply with its undertaking as set forth in its Power Supply Contract.

LITIGATION

There are no legal proceedings pending against CCCFA relating to the issuance, sale or delivery of the Bonds which could adversely affect the Clean Energy Project. In addition, there is no litigation pending or, to the knowledge of CCCFA, threatened against or affecting CCCFA or in any way questioning or in any manner affecting the validity or enforceability against CCCFA of the Bonds, the Power Supply Contract, the Prepaid Energy Sales Agreement, the CCCFA Commodity Swaps, the Receivables Purchase Provisions, the Investment Agreements, the Custodial Agreements, the Indenture, or the pledge of the Trust Estate under the Indenture.

The Project Participants report that there is no litigation pending or, to their knowledge, threatened against it questioning or in any manner affecting the validity or enforceability of the Power Supply Contracts.

NO FINANCIAL STATEMENTS

CCCFA was formed in 2021, and consequently CCCFA has not yet produced audited financial statements. Pursuant to the Undertaking described under “CONTINUING DISCLOSURE” above, CCCFA has agreed to file its audited financial statements, commencing with its audited financial statements for its fiscal year ended __________, 2021, on the MSRB’s EMMA system described above.
FINANCIAL ADVISOR

Public Financial Management, Inc. (the “Financial Advisor”), has served as financial advisor to CCCFA in connection with Clean Energy Project and the Bonds. Among other responsibilities, the Financial Advisor has provided advice and recommendations to CCCFA with respect to the structure, timing, terms of and similar matters relating to the Bonds, bond market conditions, costs of issuance and other matters relating to the Bonds and the Clean Energy Project. The Financial Advisor has also provided advice and recommendations to CCCFA, and has served as CCCFA’s “qualified independent representative,” with respect to the CCCFA Commodity Swaps. The Financial Advisor has reviewed this Official Statement, but has not audited, authenticated or otherwise verified the information set forth herein, and makes no guaranty, warranty or representation with respect to the accuracy and completeness of the information contained in this Official Statement. The Financial Advisor’s fees are contingent upon the sale and delivery of the Bonds, and are based, in part, on the proceeds of the Bonds.

UNDERWRITING

Pursuant to the purchase contract relating to the Bonds between CCCFA and Morgan Stanley & Co. LLC, as the underwriter of the Bonds (the “Underwriter”), the Underwriter has agreed, subject to certain conditions to purchase the Bonds from CCCFA at an aggregate purchase price of $____________ (representing the principal amount of the Bonds, plus original issue premium of $____________, less Underwriter’s discount of $__________). The obligation of the Underwriter to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract. The Underwriter is obligated to purchase all the Bonds if any are purchased. The Bonds may be offered and sold to certain dealers and others at prices lower than the initial offering prices, and such initial offering prices may be changed from time to time by the Underwriter. The Underwriter has no obligations other than those that are set forth in the purchase contract. The payment of the Bonds is not guaranteed by the Underwriter.

Morgan Stanley & Co. LLC has entered into a retail distribution arrangement with its affiliate Morgan Stanley Smith Barney LLC. As part of the distribution arrangement, Morgan Stanley & Co. LLC may distribute municipal securities to retail investors through the financial advisor network of Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Bonds.

Morgan Stanley & Co. LLC (together with its affiliates) is a full service financial institution engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Morgan Stanley & Co. LLC and its affiliates have provided, and may in the future provide, a variety of these services to CCCFA and to persons and entities with relationships with CCCFA, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own accounts and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of CCCFA (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with CCCFA. The
Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriter is not acting as financial advisor to CCCFA in connection with the Bonds or the offering or sale of the Bonds.

CERTAIN RELATIONSHIPS

The Energy Supplier, which is also the Receivable Purchaser, the Interest Rate Swap Counterparty and a party to the Energy Supplier Commodity Swap is a wholly owned indirect subsidiary of Morgan Stanley. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under the Morgan Stanley Guarantees. The Underwriter of the Bonds, Morgan Stanley & Co. LLC, is also a wholly owned subsidiary of Morgan Stanley.

Neither the Energy Supplier nor Morgan Stanley has guaranteed or is responsible for the payment of the Bonds. The obligations of the Energy Supplier and, by virtue of the Morgan Stanley Guarantees, Morgan Stanley are limited to those set forth in the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap, the Interest Rate Swap and the Debt Service Account Investment Agreement (if the Energy Supplier or an affiliate is the Investment Agreement Provider). Neither the Energy Supplier nor Morgan Stanley takes any responsibility for the information set forth in this Official Statement other than the information set forth under the captions “THE CLEAN ENERGY PROJECT—Morgan Stanley Guarantees” and “THE ENERGY SUPPLIER AND MORGAN STANLEY”.

RATING

Moody’s Investors Service, Inc. is expected to assign a municipal bond rating of “___” to the Bonds.

CCCFA has furnished to each rating agency that is expected to rate the Bonds certain information, including information not included in this Official Statement, about CCCFA and the Bonds. Generally, a rating agency bases its ratings on that information and on independent investigations, studies and assumptions made by each rating agency. A securities rating is not a recommendation to buy, sell or hold securities. There is no assurance that a rating, once obtained, will continue for any given period of time or that it will not be revised downward or withdrawn entirely if, in the opinion of the rating agency, circumstances so warrant. Any such downward revision or withdrawal could have an adverse effect on the marketability or market price of the Bonds. CCCFA has not undertaken any responsibility after issuance of the Bonds to assure the maintenance of the ratings applicable thereto or to oppose any revision or withdrawal of such ratings.

TAX MATTERS

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is
excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX F hereto.

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Bonds which is excluded from gross income for federal income tax purposes and State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Bonds is the first price at which a substantial amount of such maturity of the Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Bonds accrues daily over the term to maturity of such Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Bonds. Beneficial Owners of the Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such Bonds in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a Beneficial Owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. CCCFA has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel’s attention after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.
Although Bond Counsel is of the opinion that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the Bonds may otherwise affect a Beneficial Owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner’s other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel’s judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (“IRS”) or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of CCCFA, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. CCCFA has covenanted, however, to comply with the requirements of the Code.

Bond Counsel’s engagement with respect to the Bonds ends with the issuance of the Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend CCCFA or the Beneficial Owners regarding the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than CCCFA and its appointed counsel, such as the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which CCCFA legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues, may affect the market price for, or the marketability of, the Bonds, and may cause CCCFA or the Beneficial Owners to incur significant expense.

APPROVAL OF LEGAL MATTERS

The validity of the Bonds and certain other legal matters are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA. A complete copy of the proposed form of the opinion of Bond Counsel is contained in APPENDIX E to this Official Statement.

Certain legal matters will be passed upon for CCCFA by Orrick, Herrington & Sutcliffe LLP; for the Project Participant by Chapman and Cutler LLP; for the Energy Supplier by its counsel, Haynes and Boone, LLP; for Morgan Stanley by its counsel, [____________]; and for the Underwriter by Nixon Peabody LLP.
CCCFA will receive an opinion from counsel to each Project Participant on the date of original delivery of the Bonds, to the effect that the Power Supply Contract of such Project Participant has been duly authorized, executed and delivered by the Project Participant and constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms. The enforceability of the Power Supply Contract may be limited by or subject to applicable bankruptcy, insolvency, moratorium, reorganization, other laws affecting creditors’ rights generally and by general principles of equity, public policy and commercial reasonableness.

MISCELLANEOUS

Any statements in this Official Statement involving matters of opinion, estimates or forecasts, whether or not expressly so stated, are intended as such and not as representations of fact. The Appendices attached hereto are an integral part of this Official Statement and must be read in conjunction with the foregoing material. This Official Statement is not to be construed as a contract or agreement between CCCFA and the purchasers or owners of the Bonds.

The delivery of this Official Statement has been duly authorized by the Board of Directors of CCCFA.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: ________________________________

By: ________________________________
APPENDIX A

SILICON VALLEY CLEAN ENERGY

General

Silicon Valley Clean Energy (“SVCE”) is a joint powers authority organized and existing pursuant to the Joint Exercise of Powers Act (constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time) (the “Joint Powers Act”), as a “community choice aggregator” (“CCA”) as defined in Section 331.1 of the Public Utilities Code of the State of California, as amended (the “Public Utilities Code”). For a general description of CCAs in California, see the section “COMMUNITY CHOICE AGGREGATORS” in this Official Statement.

SVCE was created in 2016 under the name “Silicon Valley Clean Energy Authority” as a CCA in California pursuant to a Joint Powers Agreement, as amended, by and among the cities and towns participating in SVCE and named therein. SVCE began providing service to customers in 2017.

Originally created to serve communities in Santa Clara County, SVCE now serves 13 member communities. SVCE offers renewable power at stable rates, significantly reducing energy-related greenhouse emissions and enabling millions of dollars of reinvestment in local energy programs. SVCE’s mission is to drive increasing access to clean energy, serving the needs of our customers and the well-being of our community by delivering positive environmental impacts and local economic benefits.

Formation and History of SVCE

General. SVCE was formed in March 2016 as a “joint powers authority” in order to provide electric power and related benefits within its service area, including developing a wide range of renewable energy sources and local clean energy programs. The formation of SVCE was made possible by the passage of California Assembly Bill 117 in 2002, enabling communities to purchase power on behalf of their residents and businesses and creating competition in the electric power market. Under California Public Utilities Commission designations, SVCE (like other CCAs) is a “load-serving entity” to the communities it serves and does not provide transmission, distribution or billing services. Transmission, distribution and billing services are provided by Pacific Gas and Electric Company (“PG&E”). PG&E collects and remits SVCE’s billings for electricity to SVCE on a daily basis.

Commencement of Service and Expansion. SVCE began serving customers in communities in Santa Clara County in 2017, with the exceptions of the City of Santa Clara and City of Palo Alto, each having its own municipal utility, and the City of San Jose, which established its own CCA. In December 2017 the Board of Directors accepted the City of Milpitas as a new community member and began providing service to them in June 2018. As further described below, SVCE now serves 13 communities.
Service Area

Communities Served by SVCE. SVCE currently serves 13 jurisdictions in Santa Clara County, as follows:

- City of Cambell
- City of Los Altos
- City of Milpitas
- City of Mountain View
- City of Los Altos Hills
- City of Monte Sereno
- City of Los Gatos
- City of Los Altos Hills
- City of Monte Sereno
- City of Morgan Hill
- City of Los Gatos
- City of Monte Sereno
- City of Morgan Hill

Unincorporated County of Santa Clara

Service Area Map. The service area of SVCE is shown on the map below:

Governance and Management

Board of Directors. SVCE is governed by its Board of Directors. Each community that has elected to join SVCE appoints a representative to the Board of Directors. Members of the Board of Directors serve at the pleasure of their respective communities. Meetings of the full Board of Directors are scheduled every month. There are also an Executive Committee, a Finance and Administration Committee, an Audit Committee, and an Ad Hoc Regulatory, and Legislative
Committee, with members appointed by the Board of Directors that review and report to the Board on various matters.

Management.

Girish Balachandran, Chief Executive Officer: As the Chief Executive Officer of Silicon Valley Clean Energy (SVCE), Girish Balachandran works with the elected Board to develop and implement strategies empowering the SVCE team and community achieve its ambitious decarbonization goals. He leads the passionate employees of SVCE as they creatively solve challenges to bend the carbon curve downward in the electric supply, built environment and transportation sectors. Girish has more than 29 years of experience in California utilities, including serving as the General Manager of Riverside Public Utilities (RPU) and Alameda Municipal Power (AMP) and as an Assistant General Manager for the City of Palo Alto Utilities. His professional education includes a Master’s degree in Electrical Engineering from UCLA and a Bachelor’s degree in Electrical Engineering from Anna University in India.

Amrit Singh, Chief Financial Officer and Director of Administrative Services. As the Chief Financial Officer, Amrit oversees and leads the finance, information technology and human resources activities of SVCE. Amrit brings two decades of experience in the California Energy Markets with extensive experience in managing risks of complex energy procurement portfolios as well as in energy regulation, rate design, and commodity portfolio management. Amrit’s prior experiences include serving as Pacific Gas and Electric Company’s Senior Director, Market and Credit Risk Management and Senior Director, Revenue Requirements and Rates. Amrit also worked at startup companies and provided strategic consulting in areas of risk management and utility operations. Amrit has an MBA from the University of California, Berkeley, and a BS in Managerial Economics from the University of California, Davis.

Monica Padilla, Director of Power Resources. As the Director of Power Resources, Monica leads a team responsible for planning and carrying out the various energy and capacity procurement, management and reporting needs consistent with SVCE’s aggressive greenhouse gas reduction policies, portfolio cost and risk management objectives and California’s legislative and regulatory requirements. Since joining SVCE in 2018, Monica and her group have negotiated and executed over one billion dollars in long-term power purchase agreements for renewable resources including six solar plus storage contracts. Monica is also leading the effort on behalf of SVCE and seven other CCAs to acquire long-duration storage to help with the integration of intermittent resources and in support of the California grid. Prior to joining SVCE, Monica worked for the City of Palo Alto Utilities for over 30 years. Monica was instrumental in developing and implementing Palo Alto’s Carbon Neutral Plan in 2013, the first carbon-neutral policy adopted for a municipal utility in California. Monica also represented Palo Alto at several joint action agencies, including the Northern California Power Agency and the Transmission Agency of Northern California and oversaw the contract with Palo Alto’s largest supplier – Western Area Power Administration. Monica holds a B.S. in Business from California State University East Bay.

Don Bray, Director of Account Services and Community Relations. Don has worked closely with SVCE since its inception, leading customer engagement activities with SVCE’s major commercial and industrial accounts, and the local business community. He is responsible for
account services, customer program development and integration. Immediately prior to joining SVCE, Don served as Executive Director of Joint Venture Silicon Valley’s Smart Energy Enterprise Development Initiative (SEEDZ), involving a regional coalition of leading business, governmental, institutional and utility stakeholders focused on advancing energy system performance and sustainability in Silicon Valley. Projects included workplace and destination electric vehicle charging infrastructure, regional power quality monitoring, distributed energy storage and community-based renewable energy programs. Don’s private sector background includes 22 years with Accenture. As a Managing Partner, he was instrumental in building and leading the firm’s business systems integration consulting practice in Silicon Valley. He also co-founded and led AltaTerra Research, a market research and consulting firm focused on clean technology solutions for the enterprise marketplace. Don received a Master’s Degree in Engineering Management from Stanford University, and Bachelor’s Degree in Civil and Environmental Engineering from the University of California at Davis.

Melicia Charles, Director of Regulatory and Legislative Policy. Melicia Charles leads the Legislative and Regulatory Policy team at SVCE. Melicia has nearly a decade and half of experience developing, managing, and advocating for clean energy programs. Prior to working for SVCE, Melicia served as the Director of Policy covering California policy issues at Sunrun, the nation’s largest residential solar and storage provider. Melicia also spent over a decade working at the California Public Utilities Commission (CPUC) where she oversaw the California Solar Initiative, the Self-Generation Incentive Program – which provides incentives for distributed energy resources. Melicia helped lead the development of the CPUC’s energy storage procurement target and oversaw the CPUC’s transportation electrification policies and programs and policies related to disadvantaged communities. Melicia has an MBA from the University of San Francisco and a B.A. from UC Berkeley.

Customers

General. SVCE provides energy to more than 270,000 residential, commercial, and industrial accounts serving approximately 700,000 residents and businesses in its service area. The current mix of SVCE’s customer base is approximately 34% residential and 66% commercial/industrial by percentage of load served, and 35% residential and 65% commercial/industrial by percentage of revenue. SVCE’s 10 largest customers represent 16% of SVCE’s overall load, and no one of them individually represents more than 3.6%.

Customer Energy Choices. SVCE offers two different choices of energy service, referred to as GreenStart and GreenPrime. In 2020, customers receiving GreenStart service are provided with a minimum of 42% renewable energy, sourced from a mix of wind, geothermal, solar, small hydro and biomass/biowaste, with 48% coming from large hydroelectric facilities, and the final 10% from nuclear power. Customers electing to receive GreenPrime service are provided with 100% renewable energy from wind and solar sources.

Customer Enrollment. All customers are automatically enrolled in GreenStart and may change their product after enrollment.
Currently, approximately 98.5% of SVCE customers receive GreenStart service, with the remaining approximately 1.5% receiving GreenPrime service. Due to commercial enrollments, GreenPrime customers represent a slightly higher percentage in terms of load (4.2%).

New Customers. SVCE has fully subscribed the cities and unincorporated portions of Santa Clara County, with the exceptions of the cities of Santa Clara, San Jose, and Palo Alto, which are served by separate public power providers.

Customer Election to Opt-out of SVCE Service. Customers can opt-out of SVCE service and return to service from their traditional electric service provider, PG&E, either initially upon the transition to SVCE, or at any time after SVCE becomes the energy provider. SVCE has not experienced a single customer opt-out that had significant financial impact to SVCE’s revenues.

Cumulative Opt-Out Rate and Customer Retention. Overall, opt-out rates have remained stable in the range of 3.5 – 4.5% for eligible customers since completing the final community enrollment in mid-2018. On an ongoing basis, most opt-outs occur during the 120-day transition period to SVCE service.

Service Rates

General. Rates for SVCE energy service are determined by its Board of Directors and are not regulated by the CPUC. In addition to SVCE’s charges for energy, customers’ rates include amounts for transmission and distribution of electricity established by PG&E, as well as a “power charge indifference adjustment” (“PCIA”) and other non-by-passable load charges imposed by the CPUC in order to compensate investor-owned utilities for investments in power generation and long-term power purchase contracts associated with the loss of customers to CCAs, which in each case are passed through on a customer’s bill in the amounts established or imposed.

Determination of Rates for Energy. The rates SVCE charges for GreenStart and GreenPrime service are based on the current generation rate charged by PG&E and current PCIA fee. All value propositions are priced inclusive of the PCIA. GreenStart service is priced at 1% below the cost of PG&E, and GreenPrime is $.008 per kilowatt-hour in addition to the GreenStart rate.

Current and Historical Rate Information. An SVCE customer’s total cost of electric service is determined by SVCE’s charges for energy and include PG&E charges for transmission, distribution, and other non-by-passable charges. Additionally, SVCE’s customers pay a PCIA which can vary annually based upon a number of market factors including benchmarks for regional energy costs, resource adequacy, the year in which their community joined SVCE, and other considerations. These charges including the PCIA establish the all-in cost of service to SVCE’s customers.

The primary alternative to SVCE service is to opt-out of SVCE service and return to PG&E service where the customer would pay a generation rate, inclusive of the PCIA, that is higher than SVCE’s GreenStart rate. SVCE’s bundled rates for GreenStart service, the default for most customers, including the PCIA have been below PG&E rates since initial enrollment of customers. SVCE strives to maintain the customer value proposition it has established, as there are no
assurances that customers will continue when SVCE’s bundled costs are higher than PG&E’s or that SVCE customers will not decide to opt-out for reasons unrelated to cost of service.

California Renewable Portfolio Standards and Other Regulations

General. Community choice aggregators such as SVCE are “load-serving entities” (“LSEs”) and as such are required to comply with California’s Renewable Portfolio Standard, Resource Adequacy requirements and Power Source Disclosure requirements described below.

Renewable Portfolio Standard. California’s Renewable Portfolio Standard (“RPS”) requires LSEs to supply their retail sales with minimum quantities of eligible renewable energy. Senate Bill 100 directs all LSEs to procure 60% of their portfolios from RPS-eligible resources by 2030, and 100% of their retail sales from zero-carbon resources (or eligible renewable resources) by 2045. SVCE’s current policy is to procure 100% of retail sales from zero-carbon resources. SVCE’s 2020 retail sales contained 49.5% RPS PCC1eligible resources for GreenStart service and 100% RPS for GreenPrime. To date SVCE has executed 13 RPS contracts of ten years or more in duration and has met its RPS requirements for long-term procurement. SVCE intends to solicit additional long-term renewable resources to meet Board-directed goals and as ordered by the CPUC under the Mid-term Reliability Procurement decision (R.20-05-003). SVCE has already made significant progress towards procuring its share of long duration storage and new geothermal resources as required under the order.

Resource Adequacy. Resource Adequacy (“RA”), a California program jointly administered by the CPUC, the CEC and CAISO, directs LSEs to secure forward capacity and offer it into the CAISO’s Day-Ahead and Real-Time markets to ensure that there will be enough supply in the right locations and with sufficient ramping capability to meet load. The RA program is comprised of three products: System RA; Local RA; and Flexible RA. Local RA obligations will be assigned to a Central Procurement Entity starting in 2023. In addition, per CPUC Decision 19-11-016, LSEs are required to procure “Incremental System Capacity,” which is RA capacity that is in addition to the identified resources on the CPUC’s 2022 baseline list of resources.

Power Source Disclosure. California law requires LSEs to disclose the types of power resources used to supply retail sales. This mandate, known as the Power Source Disclosure program (“PSD”), is a consumer information program managed by the CEC on an annual basis. A key output of the PSD program is the Power Content Label (“PCL”). The PCL is an LSE-specific document that shows the breakdown of power resource types for each of the LSE’s energy products used to serve retail load, as well as a breakdown of resource types for the overall California grid. The PCL is distributed to customers each year.

Energy Demand

Long-term Load Forecast. SVCE’s long-term load forecast is a 10-year projection of the energy (reflected in MWh) that its customers will annually consume. SVCE’s long-term load forecast is driven primarily by the number and types of customers that SVCE expects to serve, in conjunction with weather projections. SVCE’s long-term load forecast also incorporates the load-
modifying effects of increasing electric vehicle adoption and charging, behind the meter solar and/or storage (via net energy metering), and energy efficiency.

![SVCE Load Forecast*](image)

*Source IEPR Adopted Numbers 2020

**Sources of Energy**

*General.* SVCE uses a portfolio risk-management approach in its power purchasing program, seeking low-cost supply as well as diversity among technologies, production profiles, project sizes and locations, counterparties, length of contract, and timing of market purchases. SVCE currently has 102 renewable, hydro, system energy, hedge and Resource Adequacy contracts in place from diversified sources and counterparties, totaling over $1.7 billion in notional amount of energy contracts to provide energy to its customers over the next 20-25 years.

*Energy Purchases.* In 2020, SVCE procured approximately 3.7 million MWh of electricity for its customers. SVCE anticipates that roughly 100% of its total 2021 retail sales will be sourced from carbon-free resources including renewables, large hydroelectric, nuclear and Asset Controlling Supplier (“ACS”) energy (primarily large hydroelectric energy from the Pacific Northwest, but also relatively small amounts of nuclear energy and unspecified system energy). SVCE’s procurement strategy through 2030 includes regularly procuring new and existing California renewables by 2030, via contracts with terms of 10 years or more. These renewables contracts will be in addition to the 2.4 million MWh of annual generation from 728 MW, or roughly 62% of its retail sales in 2024, of new and existing California and neighboring states renewables that SVCE has already procured. The strategy also includes investing in storage paired with solar, stand-alone storage, long-duration storage, and large hydroelectric resources as further described below.

*Energy Load and Supply Risk Management.* SVCE continually manages its forward load obligations and supply commitments with the objective of balancing cost stability and cost minimization, while leaving some flexibility to take advantage of market opportunities or technological improvements that may arise. SVCE closely monitors its open positions for Portfolio Content Category 1 (“PCC 1”) renewable energy and carbon-free, non-RPS eligible, based on calendar-year targets. SVCE maintains its clean portfolio coverage targets of up to 100% in the near-term and leaves a greater portion open in the medium- to long-term, consistent with generally accepted industry practice.
SVCE monitors its positions on a regular basis with its Scheduling Coordinator who produces a daily and weekly report of positions and pricing along with using sophisticated models to stochastic models to simulate hundreds of market conditions to assess optimal hedge levels and net revenue at risk. SVCE uses fixed-price energy contracts to hedge CAISO day-ahead market price exposure associated with its portfolio. More specifically, for the volumes and hours where SVCE does not have supply contracts that yield CAISO day-ahead revenue, SVCE uses fixed-price energy contracts where SVCE pays a fixed price per MWh in order to receive a floating price that clears for each hour. This helps hedge SVCE’s CAISO day-ahead market price exposure. SVCE employs a laddering hedge strategy consistent with its for up to five-years out requiring minimum and maximum tolerance bands of percent of load covered with fixed-price and firm volumes of resources. As SVCE procures increasing portions of fixed-price renewables with storage and fixed-price large hydroelectric and ACS energy, SVCE expects to reduce its use of fixed-price energy contracts.

Procurement. SVCE procures energy and Resource Adequacy consistent with its Board-approved Energy Risk Management Policy. In order to effectively plan and manage its portfolio, SVCE differentiates contracts by their term length: short-term and long-term (longer than ten years). Based upon the expected contract tenor, SVCE may use a variety of methods, including competitive solicitations, standard contract offerings, and bilaterally negotiated agreements. With regard to short-term power purchases, SVCE may negotiate bilateral agreements directly, especially for unique or time-sensitive transactions that do not lend themselves to inclusion in a competitive solicitation. Alternatively, particularly in markets with sufficient transparency to ensure competitive outcomes, SVCE may negotiate short-term transactions via its scheduling coordinator or independent energy brokers or marketers.

GreenStart Procurement Targets. Reducing GHG emissions is at the heart of SVCE’s mission. SVCE’s GreenStart and GreenPrime products provide a source of 100% clean, carbon-free energy. GreenStart is offered at 50% RPS-eligible resources and 50% carbon-free, non-RPS eligible resources while GreenPrime is comprised of 100% RPS eligible resources as verified by Green-e. Both products deliver a higher renewable content and a competitive cost in comparison to PG&E.
SVCE 2020 GreenStart Resource Mix*

*The charts above are the energy supply that SVCE used to serve its 2020 retail sales for the GreenStart and GreenPrime product offerings
SVCE 2021 Estimated GreenStart Resource Mix*

*The charts directly above are estimates of the energy supply that SVCE will use to serve its 2021 retail sales for the GreenStart and GreenPrime product offerings.

SVCE 2021 Estimated GreenPrime Resource Mix*
Further descriptions of SVCE’s policies and procedures addressing energy procurement and risk management can be found on the SVCE website at www.svcleanenergy.org. The reference to this web site address is presented herein for informational purposes only, and information on such website is not incorporated by reference to this Official Statement.

**SVCE Technology and Analytics**

SVCE’s analytics and data management are handled by a dispersed team across the organization, consisting of IT personnel, data analysts, and power analysts. SVCE intends to hire a Technology Services Manager in the coming fiscal year to oversee many aspects of the organization’s data engineering, data science and analytics. SVCE employs a cloud-first data strategy, where all mission-critical data is stored on cloud services, including Box for cloud file storage, Microsoft Office365 for collaboration, and the Google Cloud Platform (GCP) for data warehousing. GCP offers a modern infrastructure for storing, processing, and analyzing sensitive data in the cloud, with encryption by default of data at-rest and in-transit, as well as fine-grained access control to sensitive resources.

In addition to the security infrastructure embedded in both GCP, SVCE IT staff also oversee general compliance with rules and regulations established by the California Public Utilities Commission (CPUC) related to data privacy and security. SVCE conducts independent tri-annual audits of its security and data privacy practices – which are submitted to the CPUC – and produces additional data privacy reports for the CPUC annually, in compliance with CPUC regulations. To-date, SVCE customer data has not been the subject of any breaches or data security incidents.

Finally, the IT staff also oversees device and application security and related policies. In addition to standard threat mitigation and security measures (such as password policies and the use of antivirus software), SVCE enforces multi-factor authentication (MFA) where available on all mission-critical applications, and employs email screening tools, and endpoint security systems.

Ultimately, by using a centralized cloud-first policy for critical resources and attendant applications, by enforcing modern security practices such as MFA, and by limiting the use of distributed storage devices, SVCE can minimize its attack surface and exposure to security incidents.

**Energy Storage**

SVCE currently has 173 MW of wholesale (i.e., in front of the meter) storage capacity contracted over the course of the next twenty years. The 173 MW of already contracted storage capacity will be paired with solar photovoltaic renewables, and SVCE plans to procure additional solar with storage and standalone storage to meet new procurement mandates.

In 2020, SVCE launched its Lights on Silicon Valley program to deploy customer-sited solar and battery storage systems capable of providing both backup power and behind-the-meter dispatch, driving decarbonization, lowering utility costs for program participants, and enabling...
local grid management through load shaping. This program prioritizes vulnerable customers and populations that are disproportionately affected by grid outages.

Effects of COVID-19 on SVCE Operations and Finances

Remote Operations. In response to the pandemic, SVCE moved to a “remote work environment” on March 13th, 2020, with 100% of employees working from home or locations other than the SVCE office with no disruption in services to our customers. SVCE has maintained a remote work policy since that date and is in the process of reviewing this policy for a possible full return to office in the fall 2020 timeframe.

Effects on Energy Load. Overall, comparing a time periods before COVID (Jan through Dec 2019) and during COVID (mid-Mar 2020 through mid-Jul 2021) - and controlling for the weather and customer base - SVCE total load has decreased by approximately 5.5%. Residential load has increased 8%, small/med commercial has reduced by 16%, and large commercial and industrial load has reduced by approximately 10.5%.

Payment Delinquencies. During the pandemic SVCE began to experience larger than normal payment delinquencies. Historically SVCE’s customer write-offs for bad debt have been around 0.25% of billed revenue. For the current fiscal year, SVCE has been experiencing a higher delinquency rate, and we forecast write-offs to fall in the 0.75% – 1.0% range. There are several Federal and State of California funded programs to provide relief to state and local agencies experiencing payment delinquencies from customers suffering financial hardship due to the pandemic. SVCE will be pursuing reimbursement from these programs for unpaid energy bills but can make no representation regarding the amounts that will be provided to SVCE, if any.

Financial Assistance. SVCE is actively working to connect vulnerable customers to financial assistance programs to reduce arrears and mitigate risk of disconnection by PG&E. Throughout the COVID pandemic, the SVCE Board approved a suspension of certain payment policies pertaining to collections and returning customers to PG&E. The current suspension is phasing in from July through September 2021, which coincides with PG&E’s end to its disconnection moratorium. SVCE is conducting outreach throughout its communities to encourage customers to participate in a repayment plan for current charges that forges 1/12 of outstanding debt for each month of on-time payment, called the Arrearage Management Plan.

Financial Information

Revenues from Energy Sales and Operating Expenses. SVCE derives its operating revenues primarily from energy sales to its customers.

Other Sources of Revenue. SVCE also receives revenues from sources other than retail customer sales. These sources include wholesale energy sales to other suppliers, as well as grant income used to assist with various customer programs.
Results of Operations. The following is a summary of SVCE’s results of operations for fiscal years ending September 30:

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>FY 2019/20</th>
<th>FY 2018/19</th>
<th>FY 2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$295,515,259</td>
<td>$291,390,036</td>
<td>$249,204,377</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>$1,315,254</td>
<td>$1,018,493</td>
<td>$730,235</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>$6,600,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other income</td>
<td>$213,207</td>
<td>$64,606</td>
<td>$13,500</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$303,643,720</td>
<td>$292,473,135</td>
<td>$249,948,112</td>
</tr>
</tbody>
</table>

Operating Expenses

| Cost of electricity | 251,525,916 | 217,237,705 | 189,905,958 |
| Contract services    | 8,970,429  | 7,136,317   | 6,460,109  |
| Staff compensation   | 4,603,241  | 3,399,752   | 2,626,639  |
| General and admin.   | 1,722,054  | 1,175,314   | 934,728    |
| Depreciation         | 52,979     | 50,440      | 39,629     |
| Total operating expenses | $266,874,619 | $228,999,528 | $199,967,063 |

Operating income

| Interest income     | $1,729,841 | $1,230,787 | $153,840 |
| Financing costs     | $(350,511) | $(144,157) | $(15,666) |
| Total nonoperating revenues (expenses), net | $1,379,330 | $1,086,630 | $138,174 |

CHANGE IN NET POSITION

| Net position at beginning of year | $142,994,957 | $78,434,720 | $28,315,497 |
| Net position at end of year      | $181,143,388 | $142,994,957 | $78,434,720 |
Assets, Liabilities, Deferred Inflows or Resources and Net Position. The following table is a summary of SVCE’s assets, liabilities, deferred inflows or resources and net position for the years ending September 30:

<table>
<thead>
<tr>
<th></th>
<th>FY 2019/20</th>
<th>FY 2018/19</th>
<th>FY 2017/18</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$159,924,735</td>
<td>$119,048,306</td>
<td>$56,963,340</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>$31,458,312</td>
<td>$30,276,814</td>
<td>$23,661,147</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>$17,517,224</td>
<td>$19,572,100</td>
<td>$16,931,361</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>$107,318</td>
<td>$166,657</td>
<td>-</td>
</tr>
<tr>
<td>Other receivables</td>
<td>$208,000</td>
<td>$17,900</td>
<td>$86,261</td>
</tr>
<tr>
<td>Deposits</td>
<td>$4,232,419</td>
<td>$2,260,556</td>
<td>$7,992,770</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>$4,500,000</td>
<td>$5,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>$220,538,554</td>
<td>$177,676,248</td>
<td>$108,758,726</td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>$119,175</td>
<td>$148,038</td>
<td>$184,319</td>
</tr>
<tr>
<td>Deposits</td>
<td>$145,130</td>
<td>$129,060</td>
<td>$6,192,560</td>
</tr>
<tr>
<td>Total noncurrent assets</td>
<td>$264,305</td>
<td>$277,098</td>
<td>$6,376,879</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>$220,802,859</td>
<td>$177,953,346</td>
<td>$115,135,605</td>
</tr>
</tbody>
</table>

| **LIABILITIES** |            |            |            |
| Current liabilities |            |            |            |
| Accrued cost of electricity | $36,744,837 | $32,132,309 | $34,183,673 |
| Accounts payable | $1,333,121 | $946,047 | $720,538 |
| Accrued staff compensation and benefits | $415,732 | $355,192 | $191,289 |
| Other accrued liabilities | $10,000 | $257,530 | - |
| User taxes and energy surcharges due to gov | $1,155,781 | $1,238,991 | $1,020,385 |
| Security deposits from energy suppliers | - | $28,320 | $585,000 |
| **Total current liabilities** | $39,659,471 | $34,958,389 | $36,700,885 |

| **NET POSITION** |            |            |            |
| Net position |            |            |            |
| Investment in capital assets | $119,175 | $148,038 | $184,319 |
| Restricted for line of credit collateral | $4,500,000 | $5,000,000 | $2,000,000 |
| Unrestricted | $176,524,213 | $137,846,919 | $76,250,401 |
| **Total net position** | $181,143,388 | $142,994,957 | $78,434,720 |

Deposit Accounts. SVCE maintains its cash in both interest-bearing and non-interest-bearing demand and term deposit accounts at River City Bank of Sacramento, California. SVCE’s deposits with River City Bank are subject to California Government Code Section 16521 which requires that River City Bank collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of $250,000 by 110%. SVCE monitors its risk exposure to River City Bank on an ongoing basis. SVCE’s Investment Policy permits the investment of funds in depository accounts, certificates of deposit and the Local Agency Investment Fund program operated by the California State Treasury, United States Treasury obligations, Federal Agency Securities, commercial paper, money market funds and FDIC insured placement service deposits.
Other Liquidity Sources. In October 2019, SVCE entered into a revolving credit agreement with River City Bank. The available credit line under this agreement is $35,000,000 and enhances SVCE’s overall liquidity for potential working capital needs and collateral requirements. SVCE has no outstanding balance but has issued $2,535,000 in standby letters of credit under the agreement. This agreement terminates in October 2021 and is not expected to be renewed. SVCE intends to increase its cash reserve targets by 30-50 days to offset the discontinuation of the Line of Credit.
APPENDIX F

BOOK-ENTRY SYSTEM

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity of the Bonds exceeds $500 million, one certificate will be issued with respect to each $500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such maturity.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.
To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership.

DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity of the Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to CCCFA of securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts such Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and payments of principal and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from CCCFA or the Trustee on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, CCCFA or the Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of CCCFA or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to CCCFA or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.
CCCFA may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates are required to be printed and delivered to DTC.

The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that CCCFA believes to be reliable, but CCCFA takes no responsibility for the accuracy thereof.
APPENDIX G

REDEMPTION PRICE OF THE BONDS

The following table sets forth the Redemption Price of the Bonds (but excluding accrued interest which is payable from the amounts required to be on deposit in the Debt Service Account) upon an extraordinary mandatory redemption following an Early Termination Payment Date under the Prepaid Energy Sales Agreement, as of the redemption dates shown below during the Initial Interest Rate Period.

<table>
<thead>
<tr>
<th>REDEMPTION DATE</th>
<th>REDEMPTION PRICE¹</th>
</tr>
</thead>
</table>

¹ Amortized Value of the Bonds as of each Redemption Date.
**APPENDIX H**

**SCHEDULE OF TERMINATION PAYMENTS**

The following table sets forth the Schedule of Termination Payments under the Prepaid Energy Sales Agreement as of the specified Early Termination Payment Dates during the Initial Interest Rate Period. The Early Termination Payment Date is the Business Day preceding the date listed below.

<table>
<thead>
<tr>
<th>MONTH OF EARLY TERMINATION DATE</th>
<th>EARLY TERMINATION PAYMENT DATE</th>
<th>TERMINATION PAYMENT</th>
</tr>
</thead>
</table>

If any Early Termination Payment Date is not a Business Day, the Early Termination Payment is due on the preceding Business Day.

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5 If any Early Termination Payment Date is not a Business Day, the Early Termination Payment is due on the preceding Business Day.
Staff Report – Item 4

Item 4: Provide feedback on the FY 2021-22 Proposed Operating Budget, Resolution Authorizing the Chief Executive Officer to Act as Chief Personnel Officer, and Updated Budget and Reserves Policies

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
Kevin Armstrong, Administrative Services Manager

Date: 8/11/2021

RECOMMENDATION

Staff recommends that the Board of Directors provide feedback on the following items, in preparation to receive and adopt a Recommended Budget in September:

1. The fiscal year (FY) 2021-22 Proposed Operating Budget that projects depositing $36.6M into reserves.
2. A Resolution authorizing the CEO to act as Chief Personnel Officer to manage staffing
3. Updated Budget and Reserves Policies that clarify staff authority to respond to market volatility and other sources of variability such as revenue fluctuations and energy supply contract collateral/margin postings.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration Committee met August 2nd and were unanimous in recommending that staff present the Proposed FY 2021-22 Operating Budget to the full Board. In addition, the committee unanimously recommended that the Board receive the revised Budget and Reserves policies and Personnel Resolution to provide additional feedback.

ANALYSIS & DISCUSSION

The Proposed FY 2021-22 Operating Budget is balanced and presents Silicon Valley Clean Energy (SVCE) in stable financial condition. The projected balance available for reserves of $36.6 million is an increase of $42.6 million above the $6.0 million withdrawal presented in the FY 2020-21 Mid-Year Budget.

The following key elements contribute to the $36.6 million increase in the projected balance available for the reserves from the mid-year update to this annual budget.

Energy Revenues
The Proposed budget shows an increase in revenues of $87.3 million compared to the FY20-21 adjusted mid-year budget. The biggest contributor to this increase in revenues is the favorable headroom forecast based on a reduced PCIA and higher PG&E generation rate.

The proposed budget anticipates a decrease in the PCIA to occur in January 2022 (from 4.59 to 2.43 cents/kWh), with a corresponding 9.5% increase in PG&E’s generation rates, both based on CALCCA’s NewGen

1 The fiscal year 2021-22 starts on October 1, 2021 and ends on September 30, 2022.
Model using SVCE’s updated market prices. These forecast rates are comparable to those in PG&Es 2022 Forecast ERRA Filing\(^2\) made in June 2023. While this is still just a forecast, and actual rates won’t be finalized until December, if they prevail, this combination should improve SVCE’s margin by about 50% in 2022. Based on this favorable forecast, staff recommends keeping the SVCE discount to PG&E rates at 1% for the proposed budget, with the possibility of revisions once final PG&E rates are determined later this year.

The Proposed budget continues to reduce revenues to account for potential write-offs that SVCE could still incur because of the large increases in the accounts receivable balances resulting from our customers facing COVID-19 related economic hardships. SVCE is currently budgeting revenues to include a 0.75% write-off rate, which amounts to roughly $2.5 million. This is a conservative estimate, as statewide efforts are underway to potentially cover a large portion of those losses.

**Power Supply Expenses**

Power supply expenses are expected to increase to $273.5 million due to increasingly volatile market prices. In addition, the costs for non-RPS, carbon-free attributes are expected to remain high, due to the ongoing drought in the western US and the resultant low hydropower production. SVCE does expect to receive PG&E allocations in 2022 to offset some of those cost increases, but the volumes are unknown at this time. Finally, as SVCE’s long-term PPAs begin to come online starting in late 2021 and early 2022, they will put downward pressure on SVCE’s power supply costs, however, delays in their operational starts will subject SVCE to additional RPS and RA volumes at currently high market prices.

**Updated Budget and Reserves Policies**

As the fiscal year is structured to begin on October 1, and end on September 30 of the following year, SVCE faces its most volatile months (July, August, September) in the power market at the end of its fiscal year. To better respond to the potential for market fluctuations, SVCE is proposing to revise the budget and reserves policy to allow staff to use reserves to cover any unanticipated power supply cost increases, and other sources of variability such as revenue fluctuations and energy supply contract collateral/margin postings using up to 10% of the approved power supply budget.

SVCE currently has $35 million line of credit (LOC) with River City Bank that will expire in October 2021. Given SVCE’s healthy reserve balance and improved financial outlook for the upcoming years, staff recommends not to renew the LOC, which will save the organization about $150,000 a year. Depending on a particular year’s operating budget, the LOC provided an additional liquidity of about 30 to 50 days of cash on hand. Staff recommends to self-fund this level of liquidity by building reserves. Staff proposes to add 30 days of cash on hand to the current minimum reserve level and 50 days to the current target, and maximum reserve levels. The minimum operating reserve target will increase from 90 days of cash on hand (DCOH) to 120 DCOH, the target operating reserve level will increase from 180 DCOH to 230 DCOH, and the maximum operating reserve level will increase from 270 DCOH to 320 DCOH.

**Operating Expenses**

Operating expenses are expected to grow significantly in the proposed budget, increasing by $5.2 million from the FY20-21 adjusted midyear budget. The increase in projected operating expenses is largely comprised of costs associated with SVCE’s transition to a more mature organization, with staffing and professional services needs aligned with the “operationalization” of the many power purchase agreements that are starting to come online. In addition, the operating budget includes an overall 5% contingency, or just over $1 million.

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\(^2\) PG&E’s 2022 Forecast ERRA filing shows a PCIA rate of 2.71 cents/kWh and PG&E generation rate of 11.77 cents/kWh.
In terms of personnel, expenses are expected to increase by $2.6 million, through a combination of factors. $400 thousand comes from the annualization of positions adopted during FY20-21. $1.2 million of the increase is associated with the request for six new positions, spread across the organization. These new positions will focus on risk management, contract management, business process optimization, and administrative support. In addition to these new positions, SVCE is engaging several individual consultants, working both limited and long-term engagements, which contribute an additional $700 thousand in increased staffing costs. Two consultants will be working with the Power Resources team during this time of tight staffing, helping to bring our PPAs into operational status while assessing and minimizing risk.

In addition, the staffing budget includes a 5% cost-of-living adjustment to salaries, as they were not adjusted in FY20-21 due to the tighter operating margin, and this adds $300 thousand in additional cost. Finally, the personnel budget does conservatively budget for full staffing for the year, with a 5% vacancy factor applied, although SVCE expects positions to likely remain vacant longer than desired, due to the tight recruiting market we are currently experiencing.

The six new positions being requested through this proposed budget reflect the increasing needs of a mature organization. The new positions include a Compliance Manager on the Legislative and Regulatory team, to centralize our regulatory reporting work, a second Power Resources Manager on the Power Resources team to oversee the operational PPAs, and a second Energy Services Lead on the Account Services and Community Relations team to oversee programs. Three new positions supporting the whole organization are proposed for the Finance and Admin team: a Human Resources generalist to enhance benefits and employee efforts, especially during the hybrid transition, a Senior Risk Manager to provide credit analysis and middle office oversight, and a Technology Services Manager to lead the technical aspects of the business process optimization effort.

Associated with the additional staffing costs needed to bring SVCEs operations up to a fully staffed level to deal with these new operational needs, there is a $1.6 million increase in professional services costs in the proposed budget. In Finance and Admin, $100 thousand is being budgeted in recruiting for the use of outside search firms to attract talent in this competitive market. In Power Resources, $250 thousand is being added to increase PPA transaction support through our engagement with Hall Energy Law. An additional $100 thousand in costs are projected for each of Decarbonization and Grid Integration Programs, and Regulatory and Legislative Affairs, to support the Greenhouse Gas Inventory and Integrated Resource Plan efforts, respectively. In addition, staff has planned for an additional $150 thousand in cybersecurity expenses to deal with items identified in the current gap analysis and architectural review.

The final large increase in professional services is the $900 thousand being budgeted for the business process optimization (BPO) project, which addresses one of the 2021 strategic focus areas of building enterprise-wide systems. The proposed budget includes costs for software and consultant fees to support the implementation of a trade capture and contract management system, with integration to our data warehouse.

**Personnel Resolution for Increased Flexibility**

The Proposed Operating Budget funds thirty-two existing (32) full-time equivalent positions five, (5) part-time intern positions, two (2) climate corps fellows, four (4) independent consultants, and six (6) new full-time equivalent positions. Given past experience, SVCE expects that some assumptions around the positions needed will shift during the year, and that some of the assumed roles will need to be revised. To better allow staff to respond to changing organizational needs, SVCE is proposing a personnel resolution to formally authorize the CEO to act as Chief Personnel Officer, similar to the authorities granted to other CCAs and local governments. This would provide additional flexibility to better adapt and react to both changing needs, as well as the competitiveness of the hiring market. SVCE would continue to request approval for a total personnel budget and headcount annually, and would regularly report personnel changes to the Board through the CEO report.
Programs Budget

Beginning with this FY2021-22 Proposed Budget, staff will be incorporating projected programs spending over the 5-year forecast period into the reserve balance projections. This will include remaining CRCR funds until they are drawn down completely by FY23-24. For this coming fiscal year, programs spending is projected to be $6.7 million, with an additional $3.0 million in CRCR spending. In addition to these previously allocated funds, staff is currently including $600,000 from the PG&E nuclear allocation, which represents the savings to the portfolio from accepting the allocation. Options for these nuclear funds will be presented to the Executive Committee in August, for finalization by the Board in September, and so are included as a placeholder in the programs budget.

Non-Operating Revenues

Non-operating revenues decreased by about $0.89 million. This decrease reflects the end of the BAAQMD grant funding for Heat Pump Water Heater installations, as well as continues the current downward trend on interest earned in the money market account to 0.2%

STRATEGIC PLAN

The recommendation supports all goals of the Board adopted Strategic Plan. Specifically, the recommendations strongly support Goal 13 - “Commit to maintaining a strong financial position” and the accompanying Measure ”Balanced budget that achieves cash reserve targets and maintains customer value”

ALTERNATIVE

Staff is open to feedback and suggestions from the Board. At a high-level, the Board retains the options presented as “financial levers” earlier this year, which include changing the discount to PG&E, reducing the carbon-free % of power supply, reducing the renewable % of the power supply, and cutting the programs expenditure.

Considering any of the above options requires an extensive policy level discussion, and the Board can consider them while finalizing SVCE’s strategic priorities during the coming months. Given a sufficient reserve balance that maintains SVCE’s stable financial condition, and the intent to increase reserves to supplant the expiring line of credit, staff does not recommend any specific levers be utilized at this time.

FISCAL IMPACT

The FY 2021-22 Proposed Operating Budget includes total revenues of $339.1 million and total expenses of $302.8 million resulting in a surplus / contribution to reserves of $36.6 million.

ATTACHMENTS

1. FY 2021-22 Adjusted Operating Budget
2. Updated Budget Adoption, Control and Reporting Policy
3. Updated Financial Reserves Policy
4. Draft Resolution, Creating a Personnel System and designating the CEO as Chief Personnel Officer
# SILICON VALLEY CLEAN ENERGY

## FY 2021-22 PROPOSED BUDGET

($ in thousands)

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FY 2020-21 BUDGET AS ADJUSTED MIDYEAR</th>
<th>FY 2021-22 PROPOSED BUDGET</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ENERGY REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Energy Sales</td>
<td>250,747</td>
<td>338,603</td>
<td>87,856</td>
</tr>
<tr>
<td>2 Green Prime Premium</td>
<td>981</td>
<td>470</td>
<td>(511)</td>
</tr>
<tr>
<td>3 TOTAL ENERGY REVENUES</td>
<td>251,728</td>
<td>339,073</td>
<td>87,345</td>
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<tr>
<td><strong>ENERGY EXPENSES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Power Supply</td>
<td>235,237</td>
<td>273,561</td>
<td>38,325</td>
</tr>
<tr>
<td>5 OPERATING MARGIN</td>
<td>16,491</td>
<td>65,511</td>
<td>49,021</td>
</tr>
<tr>
<td><strong>OPERATING EXPENSES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Data Management</td>
<td>3,258</td>
<td>3,249</td>
<td>(9)</td>
</tr>
<tr>
<td>7 PG&amp;E Fees</td>
<td>1,350</td>
<td>1,450</td>
<td>100</td>
</tr>
<tr>
<td>8 Employment Expenses</td>
<td>6,248</td>
<td>9,271</td>
<td>3,023</td>
</tr>
<tr>
<td>9 Professional Services</td>
<td>3,800</td>
<td>5,648</td>
<td>1,848</td>
</tr>
<tr>
<td>10 Marketing &amp; Promotions</td>
<td>820</td>
<td>919</td>
<td>99</td>
</tr>
<tr>
<td>11 Notifications</td>
<td>100</td>
<td>131</td>
<td>31</td>
</tr>
<tr>
<td>12 Lease</td>
<td>500</td>
<td>525</td>
<td>25</td>
</tr>
<tr>
<td>13 General &amp; Administrative</td>
<td>1,070</td>
<td>1,129</td>
<td>59</td>
</tr>
<tr>
<td>14 TOTAL OPERATING EXPENSES</td>
<td>17,147</td>
<td>22,323</td>
<td>5,176</td>
</tr>
<tr>
<td><strong>OPERATING INCOME (LOSS)</strong></td>
<td>(656)</td>
<td>43,189</td>
<td>43,844</td>
</tr>
<tr>
<td><strong>NON-OPERATING REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Other Income</td>
<td>50</td>
<td>50</td>
<td>0</td>
</tr>
<tr>
<td>17 Interest Income</td>
<td>321</td>
<td>300</td>
<td>(21)</td>
</tr>
<tr>
<td>18 Grant Income</td>
<td>68</td>
<td>0</td>
<td>(68)</td>
</tr>
<tr>
<td>19 TOTAL NON-OPERATING REVENUES</td>
<td>439</td>
<td>350</td>
<td>(89)</td>
</tr>
<tr>
<td><strong>NON-OPERATING EXPENSES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 Financing</td>
<td>139</td>
<td>40</td>
<td>(99)</td>
</tr>
<tr>
<td>21 Interest</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>22 TOTAL NON-OPERATING EXPENSES</td>
<td>139</td>
<td>40</td>
<td>(99)</td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING INCOME (EXPENSES)</strong></td>
<td>300</td>
<td>310</td>
<td>10</td>
</tr>
<tr>
<td><strong>CHANGE IN NET POSITION</strong></td>
<td>(355)</td>
<td>43,499</td>
<td>43,854</td>
</tr>
</tbody>
</table>

## CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FY 2020-21</th>
<th>FY 2021-22</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Capital Outlay</td>
<td>400</td>
<td>150</td>
<td>(250)</td>
</tr>
<tr>
<td>26 Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>27 Transfer to CRCR Fund</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>28 Transfer to Programs Fund</td>
<td>5,270</td>
<td>6,781</td>
<td>1,511</td>
</tr>
<tr>
<td><strong>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</strong></td>
<td><strong>$5,670</strong></td>
<td><strong>$6,931</strong></td>
<td><strong>1,261</strong></td>
</tr>
<tr>
<td><strong>BALANCE AVAILABLE FOR RESERVES</strong></td>
<td><strong>($6,025)</strong></td>
<td><strong>$36,567</strong></td>
<td><strong>$42,593</strong></td>
</tr>
</tbody>
</table>
BUDGET ADOPTION, CONTROL AND REPORTING

I. PURPOSE
This budget policy provides clarity about budget authority for the Chief Executive Officer (CEO) of Silicon Valley Clean Energy (SVCE) and lays out budget adoption and periodic budget reporting requirements. The policy also allows for sufficient flexibility to address changes in the market price of energy consistent with SVCE’s Financial Reserves Policy.

II. POLICY
Budget Adoption
The CEO shall prepare a proposed budget overview and submit it to the Board for the following fiscal year two months prior to the end of the fiscal year. The Authority’s Budget shall be balanced and in alignment with the Strategic Plan. The Authority’s Budget reflects all activities, including operating and capital programs expenditures. A balanced budget is one in which expenditures are matched by revenues and recommended changes to Reserves.

The Chief Executive Officer shall submit a recommended budget document for adoption to the Board of Directors for approval by Resolution in the month following the proposed budget submittal. When approved by the Board, the budget shall be considered adopted and appropriated at the level it is controlled by the CEO, discussed below.

In the event that the Board of Directors does not adopt the Authority’s Budget by the end of the fiscal year, the Board of Directors may adopt a continuing appropriations resolution until such time as the Authority’s Budget is adopted. A continuing appropriations resolution would provide that payments for services
performed on behalf of the Authority and authorization of awarded contracts would continue until such time as the Authority’s Budget is adopted.

Staff will prepare a five-year financial forecast as part of the budget process projecting revenues and expenditures for all operating funds and planned capital projects in alignment with the Strategic Plan.

The budget document will also contain the following, at a minimum a schedule showing revenues, expenses, and changes to financial reserves. The first year of the five-year horizon is the budget to be considered and formally adopted by the Board by Resolution. The final four years are shown for planning purposes and may be shown at more summary levels.

The first year proposed budget shall further show:

- Expenditures by expense type/category across the organization;
- Projected revenues;
- Organization chart(s) showing all proposed budgeted positions in the organization;
- A current salary schedule for job classifications to be in effect for the proposed fiscal year (Salaries may be adjusted by the CEO in the fiscal year, with salary changes being reported to the Board).

**Budget Control**

After adoption, the budget shall be controlled by the CEO at the total annual expenditure level for the SVCE organization, which includes power purchases, employee costs, contract and professional services, capital improvements, debt service, and all other costs. The total budget may be amended by the Board during the year by Resolution.

The CEO may institute separate budget procedures internally that give him/her further controls at the department and/or expenditure category level if he/she so desires.

**Budget Reporting**

A budget-to-actual status update report shall be presented to the
Board on a quarterly basis.

**Authority to Flexibly Staff and Over hire Budgeted Positions**

Under the personnel delegation resolution, the CEO is designated as the Personnel Officer and is authorized and directed to administer the personnel system, with duties that include the following with budgetary impacts:

- Define and prepare position classifications including the establishment of minimum standards of employment and qualifications for the various positions;
- Prepare a schedule of compensation including salary and other benefits covering all employees;
- Prepare and present to the Authority Board a budget for implementation of the personnel system including employee salary and benefit costs as part of the annual budget process.

Notwithstanding the duties defined in the resolution above, the CEO is also granted authority to take the following actions which may affect the annual budget:

- Outsource functions that are currently staffed by positions when contracting is more advantageous to the operations of the organization or is more cost effective;
- Bring in-house any functions that are currently outsourced if the result would be advantageous to the operations of the organization or more cost effective;
- Adjust salary schedules for market flexibility during the year to attract and retain talent;
- Over-hire the number of positions shown in the annual budget as follows:
  - On a temporary basis to minimize the impact that pending vacancies may have on the organization by allowing for cross training and overlap;
  - On a permanent basis to improve operations and organization effectiveness, provided that the CEO may not over hire on a permanent basis in excess of 10% of the authorized number of positions shown in the annual budget.
without prior approval of the Board.
- In no case shall positions be added or salaries be adjusted during the year that cause the total annual budget to be exceeded in total by fiscal year-end without prior Board approval by Resolution.
- In those instances where the CEO does over-hire positions during the year, he/she shall report such actions to the Board in a timely manner.

**Power/Energy Purchases Contingency**
The nature of the energy markets is one of rapid changes in prices and market volatility. The ability to quickly adapt to those changes is important for maintaining consistent power delivery to customers. Therefore, the CEO is granted authority to overspend the total annual budget for energy purchases by up to 10% without Board approval provided the over expenditure is due to higher energy costs or greater customer demand. Overspending for these purposes may require use of reserves and the conditions on use of reserves as stated in the Financial Reserves Policy apply, where reserves cannot be drawn down more than 10% of the year’s budgeted cost of power supply without Board approval.
I. PURPOSE

This Reserve Policy outlines the appropriate types and levels (minimum, goal, and maximum) of financial reserves as prescribed in the following policy. The primary reason for a reserve policy is to be prepared for contingencies, but other reasons also exist. Seven important purposes of a reserve policy are as follow:

1. **Plan for contingencies.** To maintain sufficient reserves to minimize rate increase due to market volatility (power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.

2. **Maintain good standing with rating agencies.** By maintaining sufficient reserves, SCVE can preserve good credit ratings, allowing it to secure power at lowered costs, that is, without posting credit enhancements, in the energy markets.

3. **Avoid interest expense.** To avoid interest expense to cover short-term cash shortfalls by having sufficient reserves to use for this purpose, rather than debt.

4. **Ensure cash availability when revenue is unavailable.** To bridge times of the year that normally see temporary low levels of cash.

5. **Plan for anticipated future rate increases by gradually raising those rates, using reserves to cushion the full impact on customers over an extended time period.** For example, if it is expected that rates are highly likely to increase in 3 to 5 years, higher reserves on hand can cushion those rate increases over a more gradual timeframe by drawing down on the accumulated funds that may be in excess of the reserves’ goal.

6. **Manage the risks identified in the Energy Risk Management Policy, which are:**
• Market price risk,
• Net revenue risk,
• Counterparty credit and performance risk,
• Load and generation volumetric risk,
• Operational risk,
• Liquidity risk, and
• Regulatory/legislative risk.

7. Establish clear expectations between the Board of Directors and staff. A formal reserve policy creates a shared understanding of the proper level and use of reserves.

II. POLICY

Reserve Levels Established
Financial reserves shall be set aside as follows:

The Reserve targets cover the operations of SVCE over a number of days in the event of emergencies or other significant unforeseen events. Three levels are defined, with the first being baseline. Given the purposes stated above, the Reserve shall be maintained at no less than the minimum described in (a) below. The reserve level described in (b) is recommended as the goal. The Maximum reserve level described in (c) would provide solid reserves for significant fluctuations in revenue or unforeseen circumstances. The Board shall review its reserve levels annually in context of SVCE’s overall financial condition of the agency, as well as due to changes to the industry and/or risk factors as described in periodic review of targets below.

(a) Minimum Operating Reserve (baseline) shall be the minimum maintained to cover 120 days of operations of the annual operating budget;

(b) An Operating Reserve goal of covering 230 days of operations of the annual operating budget;

(c) Maximum Operating Reserve to cover 320 days of operations of the annual operating budget.
Conditions for Use of Reserves

For purposes of this policy, use of reserves is defined as a projected or estimated\(^1\) reduction in reserves by fiscal year-end. A temporary reduction in cash consistent with the expected peaks or dips in revenues and expenditures are normal cyclical occurrences to be expected during the fiscal year, and do not constitute a use of reserves.

The reserves may be drawn down upon by the CEO during the year, up to 10% of the year’s budgeted cost of power supply, to:

1. Cover increases in power supply expenses due to spikes in costs and/or due to higher customer demand;
2. Provide necessary funds to make up for unanticipated revenue shortfalls;
3. Meet any margin or collateral posting requirements under energy supply contracts; and,
4. Provide resources to meet emergency expenditures.

If further use of reserves are needed to manage the operations of the organization, the CEO will make recommendations to the Board and the Board must authorize any such use.

Replenishment of Reserves

Should SVCE drawdown reserves below the minimum target level and the level required for the Energy Reserve, SVCE will implement plans to return reserves to their minimum targets within two (2) fiscal years. Such plans will be provided in subsequent budget and rate discussions with the Board.

Excess Reserves

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\(^1\) It is not practical to wait the formal fiscal year end closing of the accounting records to determine if the reserves have been “used”. Therefore, it is appropriate for staff to estimate reserve levels, with the important amount being what is estimated for fiscal year end.

Adopted: 3/08/2017
Proposed Amendment: 9/8/2021
If reserve funds are projected to exceed the maximum level, the CEO shall present options for consideration by the Board of Directors for proper disposition of those reserves during the next budget cycle.

**Reserves between Minimum and Maximum**
To the extent that reserves are above target and below the maximum, no other action by SVCE would be required.

**Periodic Review of Reserve Goals**
Reserve goals shall be periodically reviewed for consistency with industry standards. If significant risk factors are eliminated or significant new risks emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve policy shall be reviewed, and the funding level shall be adjusted accordingly. Unless the Reserves are approaching minimum levels, formal Reserve funding discussions with the Board may await the next budget process.

**Reporting**
Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports. Reserve target levels (minimum and maximum) will be analyzed annually, and over/under reserve determination shall be made in conjunction with year-end financial results. These results will be reported to the Board of Directors as part of the year-end financial report presentation.
SILICON VALLEY CLEAN ENERGY AUTHORITY RESOLUTION

NO. 2021-xx

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO: APPROVE THE CREATION OF A PERSONNEL SYSTEM TO INSURE EQUITABLE AND UNIFORM POLICIES AND PROCEDURES FOR ADMINISTERING PERSONNEL MATTERS IN COMPLIANCE WITH APPLICABLE LAWS; DESIGNATING THE CHIEF EXECUTIVE OFFICER (CEO) AS PERSONNEL OFFICER; AND DELEGATING AUTHORITY TO THE CEO TO CARRY OUT ALL DUTIES NECESSARY TO IMPLEMENT THE PERSONNEL SYSTEM

WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016, pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, under Section 2.5 of the Joint Powers Agreement ("JPA") creating the Silicon Valley Clean Energy Authority ("Authority"), the Authority has the power to employ agents and employees; and

WHEREAS, in exercising its powers, the Authority wishes to establish a uniform and equitable system of personnel administration to ensure effective service to and on behalf of the Authority and to establish procedures for administering personnel matters in compliance with applicable laws and policies established by the Authority Board; and

WHEREAS, in adopting a personnel system, the Authority desires to promote fairness and equity to employees, to attract the best and most competent persons available, to assure the appointment and promotions of employees will be based on merit; and to implement best practices in the administration of its system; and

WHEREAS, the personnel system as set forth below meets all of the requirements of applicable Government Code provisions and the JPA.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve that:

1. The foregoing recitals are true and correct.

2. A personnel system for the recruitment, selection, employment, classification, compensation, advancement, performance review, discipline, discharge and retirement of employees is hereby established.

3. The Chief Executive Officer (CEO) shall be designated as the Personnel Officer and is authorized and directed to administer the personnel system. The Chief Executive Officer may delegate powers conferred upon him or her by this Resolution as appropriate.
4. The Personnel Officer shall:
   a. Act as the appointing authority for all employees of the Authority with the exception of the Authority’s General Counsel;
   b. Prepare and implement an employee handbook, along with any personnel rules and regulations necessary for the administration of this personnel system;
   c. Define and prepare position classifications including the establishment of minimum standards of employment and qualifications for the various positions;
   d. Prepare a schedule of compensation including salary and other benefits covering all employees;
   e. Provide the publishing or posting of notices of recruitments for positions and develop and administer procedures of the selection process;
   f. Prepare and present to the Authority Board a budget for implementation of the personnel system including employee salary and benefit costs as part of the annual budget process;
   g. Prepare policies and procedures regarding ethics and the conduct of business including, without limitation, policies relating to conflict of interest, fair and equitable treatment of employees, use and safeguarding of Authority property and resources, and standards of ethical conduct by employees.
   h. Perform such other functions as necessary to administer the personnel system as directed from time to time by the Authority Board.

5. Right to Contract for Special Services. The Personnel Officer may contract for the performance of technical or special services necessary for the establishment or operation of the personnel system including, without limitation, services for the preparation of personnel rules and subsequent revisions and amendments thereof; preparation of classification and pay plans and subsequent revisions and amendments thereof; the design and conduct of employee training programs; the conduct of recruitment and hiring processes; and, other special and technical services of an advisory or informational character on matters related to the administration of the personnel system.

**PASSED AND ADOPTED** this 8th day of September, 2021, by the following vote:

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Chair

ATTEST:

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Andrea Pizano, Board Secretary
Silicon Valley Clean Energy
Board of Directors Meeting

August 11, 2021

Appendix A

Power Resource Contracts Executed by CEO
This Confirmation under the WSPP Agreement confirms the transaction between AES Redondo Beach, L.L.C., a Delaware limited liability company (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of July 19, 2021 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, and C are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason, except for as provided for under Section 5.8.5 of this confirm and Section 10 of the WSPP Agreement.

(b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month shall equal the Expected Contract Quantity.

(d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser’s instructions, including Purchaser’s instructions to withhold all or part of the Expected Contract Quantity from

2

AES Redondo Beach
Seller’s Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 **Reductions in Contract Quantity**

If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff and (iii) that Seller does not initiate the Planned Outage in the months of July, August, and September.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 **Seller’s Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for each day of each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any day of a Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each day of the Showing Month is not more than the Contract Quantity, provided that in each case:
(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month; and

(b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser’s receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule. Notwithstanding the foregoing in this Section 2.4, Seller shall have no obligation to propose a change in the Planned Outage Schedule and Purchaser shall have no rights with respect to such changes, if Seller is providing Alternate Capacity.

2.5 Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity

(a) Except as provided in Section 5.8 of this Confirmation, if Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

(b) Except as provided in Section 5.8 of this Confirmation, Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then,
without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 **Purchaser’s Re-Sale of Product**

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller shall, and shall cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

**ARTICLE 3**

**PAYMENTS**

3.1 **Payment**

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day
of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 **Allocation of Other Payments and Costs**

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.
ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1  CAISO Requirements

Seller shall schedule or cause the Shown Unit’s SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit’s SC, owner, or operator for noncompliance.

4.2  Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3  Seller’s Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a)  No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b)  The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c)  the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained and are subject to Section 5.8 of this Confirmation.”
5.2 **Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

(c) Seller and Purchaser acknowledge that this Conformation has been negotiated and executed in conjunction with three other confirmations executed by Seller and
three other purchasers, each of which has been entered into on substantially similar terms and conditions as this Confirmation and is being entered into concurrently herewith. Accordingly, the confidentiality provisions of this Section 5.2 shall not be deemed to preclude disclosures by Seller and/or Purchaser to and among such other purchasers.

5.3 **Dodd-Frank Act**


5.4 **Change in Law**

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

5.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 **Collateral**

As set forth in the WSPP Agreement; provided, however, that for purposes of calculating credit requirements pursuant to Section 27, the Parties further agree that the mark-to-market value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy requirements product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the mark-to-market value for this Transaction.

5.7 **No Recourse to Members of Purchaser**
Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation.

5.8 **Conditions Precedent**

5.8.1. A continuous right of operation pursuant to an amendment to the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows Once Through Cooling ("OTC") and a corresponding recognition of such amendment in all necessary permits is a condition precedent to the effectiveness of this Confirmation and is a continuing condition for any obligation to provide resource adequacy ("RA") or any other product from the Redondo Beach facility ("RB") Units 6 and/or 8 under this Confirmation.

5.8.2. Purchaser explicitly recognizes that, notwithstanding anything to the contrary herein, in order for Seller to provide RA or any other product under this Confirmation, the California State Water Resources Control Board (SWRCB) must approve an extension of the right for Seller to operate one or more Units of the Redondo Beach facility operation pursuant to an amendment to the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows OTC for periods extending beyond December 31, 2021 (an "Extension Order"). Except to the extent allowed to operate under an Extension Order, Section 4.3(b) (Capability of delivering Product) of the Confirmation is explicitly waived by Purchaser and Seller makes no such representations.

5.8.3. This Confirmation shall have force and effect only to the extent consistent with an Extension Order. Thus, if an Extension Order is issued only with respect either Redondo Beach Unit 6 or 8, this Confirmation shall be effective only with respect to the RB Unit or Units to the extent an Extension Order was granted. In such event, the Contract Quantity in Appendix B as set forth in this Confirmation shall be automatically adjusted for each Calendar Year for which an Extension Order was not received for RB Units 6 or 8 as follows:

\[
\text{NQC of the RB Unit 6 and/or 8 for which an Extension Order was received} \times \frac{\text{Total NQC of RB Units 6 and 8}}{\text{Contract Quantity in Appendix B}} = \text{Adjusted Contract Quantity}
\]

Furthermore, the FCR Attributes in Appendix B shall be reduced in the same proportion as the Contract Quantity was reduced pursuant to the immediately preceding calculation. If an Extension Order applies with respect to calendar year 2022 but not to any future period, subject
to Section 5.8.7, this Confirmation shall automatically terminate with respect to any period after December 31, 2022, which termination shall be with no liability or obligation of Seller under Section 5.1 (Termination Payment) or otherwise and shall be absolute and unaffected by any potential subsequent action that may be taken by the SWRCB on rehearing, in a subsequent proceeding or otherwise, and regardless of whether such subsequent action is taken prior to or after such scheduled termination date.

5.8.4. If the SWRCB has not issued an Extension Order on or before October 31, 2021, then either Party may terminate this Confirmation by providing written notice to the other Party (which may be via e-mail) at any time after October 31, 2021, and on or before December 1, 2021, without liability or obligation under Section 6.1 of this Confirmation (Termination Payment) or otherwise. Subject to Section 5.8.7, any such termination shall be absolute and unaffected by any potential subsequent action that may be taken by the SWRCB on rehearing, in a subsequent proceeding or otherwise.

5.8.5. Without limiting the rights of the Seller or Purchaser to terminate this Confirmation as set forth herein, performance by Seller under this Confirmation shall be excused by reason of Uncontrollable Forces (and otherwise subject to all provisions related to Uncontrollable Forces applicable to the Confirmation) if an Extension Order is issued by the SWRCB but is subsequently reversed or nullified by the SWRCB or by a lawful order of a court or by any other governmental authority having appropriate jurisdiction, or during any period of time where a court or other governmental entity had enjoined operations of an RB Unit or barred performance of such Unit or under this Confirmation for any reason related to the OTC compliance date or Extension Order. This provision explicitly modifies Section 6.4 of the Confirmation (Change in Law) and to the extent this provision applies, neither party shall have any obligation under Section 6.4 (Change in Law) to work to revise this Confirmation.

5.8.6. This Confirmation constitutes a compromise, settlement, and release of the Parties’ disputed claims under that certain prior confirmation entered into between the Parties on or about May 2020 (the “Prior Confirmation”). Nothing in this Confirmation shall be construed as an admission by any Party of any contract breach, fact, finding, conclusion, issue of law, or violation of law with respect to the Prior Confirmation, nor shall compliance with this Confirmation constitute or be construed as an admission by any Party of any contract breach, fact, finding, conclusion, issue of law, or violation of law with respect to the Prior Confirmation. In consideration and inducement of the promises and obligations set forth herein, the Parties hereby irrevocably waive and release any right or any claim under the Prior Confirmation for any period after December 31, 2021. For the avoidance of doubt, any claims arising out of a default or a breach of this Confirmation shall be resolved pursuant to the terms of this Confirmation (including the terms of the WSPP Agreement incorporated herein) and without reference to the Prior Confirmation.

5.8.7. If (i) this Confirmation is terminated in accordance with Section 5.8.4, (ii) there is an action by the SWRCB subsequent to such termination and prior to January 1, 2023, that amends the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows an OTC extension for RB Units 6 and 8 ("Subsequent SWRCB
Action”), and (iii) Seller elects, in its sole and absolute discretion, to sell RA from either RB Unit 6 or 8, then the following shall apply:

(a) Seller shall have a put option, exercisable in its sole discretion (the “Put Option”), and Purchaser shall have a call option, exercisable in its sole discretion (the “Call Option” and, together with the Put Option, the “Options” and each, an “Option”), in each case, whereby Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, such RA.

(b) The Options may be exercised by the Party holding such Option giving written notice to the other Party within ten (10) Business Days (the “Option Period”) of notice by Seller to Purchaser that it intends to operate and sell RA capacity as a result of the Subsequent SWRCB Action. If a Party fails to exercise its Option during the Option Period, then such Option shall expire and such Party shall have no further right to exercise such Option. Unless the Option Period expires without either Party exercising its Option, Seller shall not take any action that would contravene or otherwise conflict with Purchaser’s rights under such Option, including, without limitation, entering into agreements with other third parties regarding the sale of RA to be sold hereunder.

(c) The price of RA sold as a result of the exercise of an Option shall be the same price as set forth in Appendix B.

(d) The quantity of RA sold as a result of the exercise of an Option shall be as set forth in Appendix B and adjusted as follows:

\[
\text{Adjusted Contract Quantity} = \left( \frac{\text{Total NQC of RB Units 6 and 8}}{\text{NQC of the RB Unit 6 and/or 8 For which an Extension Order was received}} \times \text{Contract Quantity in Appendix B} \right)
\]

Furthermore, the FCR Attributes in Appendix B shall be reduced in the same proportion as the Contract Quantity was reduced pursuant to the immediately preceding calculation.

(e) The obligations to purchase and sell RA as a result of the exercise of an Option shall commence no earlier than the first Showing Month beginning 30 days or more after the exercise of the option in accordance with Section 5.8.7(b) and shall terminate as of the earlier of (I) the end of the Delivery Period set forth in Appendix B or (II) the last day that the amendment to
the Water Quality Control Policy on the use of Coastal and Estuarine Waters for Power Plant Cooling that allows an OTC extension is effective as specified in the Subsequent SWRCB Action.

(f) The applicable provisions of this Confirmation, including without limitation, (I) all Delivery Obligations set forth in Article 2, (II) Purchaser and Seller Covenants set forth in Article 4, and (III) Section 5.8.5, will apply to the sales of RA as a result of the exercise of an Option.

5.9 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the WSPP Agreement is amended by:

In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(e) In Section 22.3(f), delete the entire provision and replace with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to
the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

(i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.

(j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR
MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

(k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation.”.

(l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)( the “Mobile-Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010).
(ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.10 **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.11 **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

AES REDONDO BEACH, L.L.C.

By: [Signature]

Name: Mark E. Miller
Title: Vice President

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: [Signature]

Name: Girish Balachandran
Title: CEO

AES Redondo Beach
APPENDIX A
DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Call Option” has the meaning set forth in Section 5.8.7(a).

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.
“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“Extension Order” has the meaning set forth in Section 5.8.2.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.
“Option” and “Options” has the meaning set forth in Section 5.8.7(a).

“Option Period” has the meaning set forth in Section 5.8.7(b).

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Put Option” has the meaning set forth in Section 5.8.7(a).

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“SC” means Scheduling Coordinator as defined in the Tariff.
“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Subsequent SWRCB Action” has the meaning set forth in Section 5.8.7.

“SWRCB” means the State Water Resources Control Board.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR          ☐ Local RAR          ☑️ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone:
MCC Bucket:
CPUC Local Area (if applicable):
Flexible Capacity Category (if applicable):

Delivery period: [Redacted] subject to conditions precedent and other provisions of this Confirmation and Agreement that may result in a termination, including Section 5.8

Contract Quantity and Contract Price:
<table>
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<tr>
<th><strong>Unit Specific Information</strong></th>
<th><strong>REDONDO GEN STA. UNIT 6</strong></th>
<th><strong>REDONDO GEN STA. UNIT 8</strong></th>
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<tr>
<td><strong>Resource Name</strong></td>
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<td>CAISO Resource ID</td>
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<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<td>TAC Area (e.g., PG&amp;E, SCE)</td>
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<td>SCE</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
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<td>LA Basin</td>
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<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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*(Repeat for additional Units)*

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
## APPENDIX C
### NOTICE INFORMATION

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<thead>
<tr>
<th>Seller:</th>
<th>Purchaser:</th>
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<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>Defaults:</strong></td>
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Appendix C - 1

AES Redondo Beach
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Appendix C - 2

AES Redondo Beach
Appendix D

Planned Outage Schedule
RESOURCE ADEQUACY CONFIRMATION LETTER

This Confirmation Letter ("Confirmation") confirms the Transaction agreed to on July 23, 2021 (the "Confirmation Date"), between SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority ("Buyer") and MARIPOSA ENERGY, LLC, a Delaware limited liability company ("Seller"), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product, and is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 19, 2020, together with the Cover Sheet to the EEI Agreement, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless stated to be references to Sections of the Master Agreement or a statute.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A and B are incorporated into this Confirmation.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Quantity of the Product from the Shown Unit(s).

(b) Seller will deliver the Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Buyer, as further specified in Appendix B. all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Quantity, less any excused deductions to the Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Quantity by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month. If during any period the
Showed Unit described on Appendix B is not available to provide the full amount of the Quantity as a result of any Planned Outage of the Unit, or reduction in the Unit EFC or Unit NQC of such Unit, or for reason of Force Majeure, then (i) Seller shall notify Buyer by the Notification Deadline of the amount, if any, of the Quantity that Seller will not sell and deliver, or will sell and deliver from a different Shown Unit that meets requirements of this Confirmation, during such period, and (ii) Seller will be excused from providing the Quantity of the Product in excess of that of which Seller notified Buyer pursuant to Section 2.1(d)(i) of this Confirmation, and Seller will not be liable to Buyer for amounts due under Section 2.2 of this Confirmation or Section 4.1 of the Master Agreement, or for any other penalties or damages, for providing less than the full Quantity, for the amount of the Quantity of the Product in excess of that of which Seller notified Buyer pursuant to Section 2.1(d)(i) of this Confirmation that it would deliver.

In the case of reduction in the Unit EFC or Unit NQC, such reduction shall be calculated in accordance with the following formulas:

In the case of reduction in the Unit EFC:

\[ \text{Amount of reduction in the Unit EFC} \times \text{Prorated Percentage of Unit Flexible Factor} \]

In the case of reduction in the Unit NQC:

\[ \text{Amount of reduction in the Unit NQC} \times \text{Prorated Percentage of Unit Factor} \]

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer’s instruction to withhold all or part of the Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer will have received the Quantity if (i) Seller’s Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer’s instruction to withhold all or part of the Quantity from Seller’s Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Quantity if Buyer fails
or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.

(h) Excused Reductions in Unit EFC: If the Product includes FCR Attributes, then Seller’s failure to deliver any of the Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller’s failure is excused will be calculated in accordance with Section 2.1(d). If the Unit experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Quantity of FCR Attributes for such day from the Shown Unit.

2.2 Buyer’s Remedies for Seller’s Failure to Deliver Quantity

(a) If Seller fails to deliver any part of the Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement.

(b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.3 Buyer’s Re-Sale of Product

(a) Buyer may re-sell all or part of the Product: provided that any such re-sell must not increase Seller’s obligations hereunder other than as set forth in this Section 2.3(a). For any such resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller will, or will cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to take all commercially reasonable actions and execute all documents or
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instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit’s SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

ARTICLE 3
PAYMENTS

3.1 Payment

Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (a) ten (10) Calendar Days after Buyer’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (b) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (i) the applicable Contract Price for that Showing Month, (ii) the Expected Contract Quantity for the Showing Month and (iii) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Buyer under the Master Agreement.

(b) Buyer is to receive and retain all revenues associated with the Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-
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(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit’s SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.

(c) If CAISO designates any part of the Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit’s SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit’s SC to schedule or make available to CAISO the Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for, and Seller will indemnify and hold Buyer harmless from, the failure of Seller or the Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit’s SC, owner, or operator for noncompliance.

4.2 Seller’s and Buyer’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents reasonably necessary, to enable (a) Buyer’s rights to the Expected Contract Quantity for the sole benefit of Buyer, or any Subsequent Buyer, and (b) Buyer, or any Subsequent Buyer, to use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable efforts shall include cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including supporting documentation demonstrating that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy RAR pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.
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4.3 Seller’s Representations and Warranties

Seller represents and warrants to Buyer throughout the Delivery Period that:

(a) no part of the Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) the Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;

(d) if applicable, Seller has notified either the Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Quantity of Product for the Delivery Period to Buyer; and

(e) Seller has notified or will notify the Unit’s SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 5
ADDITIONAL MASTER AGREEMENT AMENDMENTS: GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is added to the end of Section 5.3 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Quantity in a Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer must promptly remit to Seller the excess amount with interest in accordance with Section 6.2 of the Master Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”
5.2 Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, Proposed Guidance, Certain Natural Gas and Electric Power Contracts, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Governing Law

Nothing contained in this Confirmation shall be construed as a grant of CPUC jurisdiction over a Party not otherwise subject to such jurisdiction by law.

5.5 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.6 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement to the contrary, this Transaction may be confirmed only through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.
AGREED AS OF THE CONFIRMATION DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

MARIPOSA ENERGY, LLC

By: Paul Shepard
Name: Paul Shepard
Title: Asset Management Representative

Mariposa Energy, LLC
APPENDIX A

DEFINED TERMS

"CAISO" means the California ISO.

"Capacity Attributes" means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, however entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.1(d) and 2.1(h) with respect to which Seller has not elected to provide Alternate Capacity.

"FCR" means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPLC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having
jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions. by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Date.

“Subsequent Buyer” means the buyer of Product from Buyer in a re-sale of Product by Buyer.
**Execution Version**

"Tariff" means the CAISO Tariff, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means the generation unit described in Appendix B and any Shown Unit.

"Unit EFC" means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation Date and that of the Unit on a subsequent date of determination.

"Unit NOC" means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

- [ ] RAR
- [x] Local RAR
- [x] Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
- CAISO Zone: NP15
- MCC Bucket: 4
- CPUC Local Area (if applicable): Greater Bay Area
- Flexible Capacity Category (if applicable): 1

### Contract Quantity and Contract Price:

<table>
<thead>
<tr>
<th>Showing Date</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-m)</th>
<th>Showing Date</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-m)</th>
<th>Showing Date</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Physical Location</th>
<th>CAISO Resource ID</th>
<th>SCID of Resource</th>
<th>Unit NQC by month</th>
<th>Unit EFC by month</th>
<th>Resource Type (e.g., gas, hydro, solar, etc.)</th>
<th>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</th>
<th>TAC Area (e.g., PG&amp;E, SCE)</th>
<th>Prorated Percentage of Unit Factor</th>
<th>Prorated Percentage of Unit Flexible Factor</th>
<th>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</th>
<th>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mariposa Energy</td>
<td>Byron, CA</td>
<td>KELSO_2 UNITS</td>
<td>See Table</td>
<td>See Table</td>
<td>Combustion Turbine</td>
<td>1</td>
<td>PG&amp;E</td>
<td>See Table</td>
<td>See Table</td>
<td>Bay Area</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Prorated Percentage Table

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit NQC / Unit EFC</th>
<th>Prorated Percentage</th>
</tr>
</thead>
</table>

1. Taken from Final Net Qualifying Capacity Report for Compliance Year 2021 at
Execution Version

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** San Luis West Solar, LLC, a Delaware limited liability company

**Buyer:** Silicon Valley Clean Energy Authority, a California joint powers authority

**Description of Facility:** A 125 MW solar photovoltaic generating facility combined with a co-located 31.25 MW/125 MWh (at 4 hour discharge) battery energy storage system and associated facilities located in Fresno County, California, as further described in Exhibit A.

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>9/1/2021</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>12/31/2022</td>
</tr>
<tr>
<td>Network Upgrades Completed</td>
<td>12/31/2023</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>1/6/2023</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>12/23/2023</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>10/1/2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>12/1/2023</td>
</tr>
</tbody>
</table>

**Delivery Term:** The period for Product delivery will be for fifteen (15) Contract Years.

**Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
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<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>
Guaranteed Capacity: 62.5 MW

Storage Contract Capacity: 15.625 MW

Storage Contract Output: 62.5 MWh

Storage Facility Loss Factor: [Redacted]

Guaranteed Storage Availability: [Redacted]

Maximum storage facility cycles per year: [Redacted]

Delivery Point: Facility PNode

Contract Price

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
</tr>
</tbody>
</table>
Product:

- PV Energy
- Discharging Energy
- Green Attributes (Portfolio Content Category 1)
- Storage Capacity
- Capacity Attributes (select options below as applicable)
  - Energy Only Status
  - Full Capacity Deliverability Status (completed)
- Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security: [Redacted]

Performance Security: [Redacted]
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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of June 25th 2021 (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own or otherwise control, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"AC" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.12.

"Adjusted Energy Production" has the meaning set forth in Exhibit G.

"Adjusted Facility Energy" means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor for such period.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person; and with respect to Seller, it includes Seller’s Ultimate Parent and such Ultimate Parent’s Affiliates. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

San Luis West Solar, LLC
“Agreement” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Ancillary Services” means those ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing consistent with the Operating Restrictions, Prudent Operating Practice, and the requirements and limitations set forth in this Agreement. Ancillary Services do not include Tax Credits.

“Approved Forecast Vendor” means AWS Truepower, DNV-GL, or any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Availability Adjusted Storage Contract Capacity” has the meaning set forth in Exhibit P.

“Available Generating Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” means Silicon Valley Clean Energy Authority, a California joint powers authority.

“Buyer Bid Curtailment” means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where the Buyer or the SC for the Facility:
(c) did not submit a Self-Schedule or an Energy Supply Bid for the MWh subject to the reduction;

(d) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(e) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (ii) a curtailment of any portion of the Generating Facility or its output or any reduction in PV Energy arising out of Buyer’s issuance of any Discharging Notice or any other instruction, order or other communication requesting or requiring the Storage Facility to be discharged.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.
“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and operating procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.
“**Charging Energy**” means the as-available Energy produced by the Generating Facility and delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s Scheduling Coordinator or CAISO, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction shall be in accordance with the Operating Procedures and the CAISO Tariff; and (b) if, during a period when the Storage Facility is instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable Charging Notice, then the Charging Notice shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“**Claim**” has the meaning set forth in Section 16.2.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, 

“**Compliance Actions**” has the meaning set forth in Section 3.12.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1(a).

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“**CPUC**” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Curtailment Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which generation from the Generating Facility is reduced pursuant to a
Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Italics Delay Damages” means an amount equal to (a) the Development Security amount required hereunder. __________

“Damage Payment” means the dollar amount that equals the amount of the Development Security.

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Dedicated Interconnection Capacity for Facility” has the meaning set forth in Exhibit A.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the
Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff. If the Storage Facility is instructed to discharge in a manner that would result in the total amount of Facility Energy exceeding the interconnection capacity limit for the Facility at the Delivery Point (but not less than the Dedicated Interconnection Capacity For Facility), then the Discharging Notice shall be deemed to be automatically adjusted to reduce the amount of total Facility Energy to the interconnection capacity limit, until such time as Buyer, the Scheduling Coordinator, or CAISO issues a new or modified Discharging Notice. For the avoidance of doubt, except as otherwise provided in this Agreement, such as in the definition of Buyer Curtailment Order, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between either the Generating Facility and the Delivery Point, or the Storage Facility and the Delivery Point, as applicable, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Generating Facility.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Facility’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all emission reduction credits, marketable emission trading credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Facility.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.
“**Excused Event**” has the meaning set forth in [Exhibit P](#).

“**Executed Interconnection Agreement Milestone**” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

“**Facility**” means the Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**Facility Meter**” means the CAISO Approved Meter or combination of meters, including the Generating Facility Meter(s) and Storage Facility Meter(s), that will measure all Facility Energy.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Forecasting Penalty**” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead Forecast, or if there is no Day-Ahead Forecast, then the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.10(a).
“Full Capacity Deliverability Status” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the environmental benefits associated with the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, (ii) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO Approved meter(s) that measure the PV Energy. The Generating Facility Meter shall be programmed, in accordance with the CAISO Tariff, to correct for direct path transmission losses between the Generating Facility Meter and the Delivery Point (not including any losses from other facilities that share the common Delivery Point with this Facility).

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, however, that “Governmental Authority” shall not in any event include any Party.
“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the environmental attributes associated with generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” has the meaning set forth in Section 4.8.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.
“Guarantor” means, with respect to Seller, (a) a Person that is reasonably acceptable to Buyer, or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least One Hundred Fifty Million Dollars ($150,000,000), (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Imbalance Energy” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnifiable Loss(es)” has the meaning set forth in Section 16.1(a).

“Indemnified Group” has the meaning set forth in Section 16.1(a).

“Initial Synchronization” means the initial delivery of Facility Energy to the Delivery Point.

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Battery Capacity.

“Installed Battery Capacity”

“Installed PV Capacity”

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and
pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Investment Grade Credit Rating**” means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated March 31, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.
“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” or “LMP” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Master File” has the meaning set forth in the CAISO Tariff.

“Maximum Charging Capacity” has the meaning set forth in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in Exhibit A.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Delivery Forecast” has the meaning set forth in Section 4.3(b).

“Monthly Storage Availability” has the meaning set forth in Exhibit P.

“Moody’s” means Moody’s Investors Service, Inc., or its successors.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Interval, the Real-Time Market LMP at the Facility’s PNode is less than Zero Dollars ($0).

“Negative LMP Costs” has the meaning set forth in Exhibit C.

“NERC” means the North American Electric Reliability Corporation or any successor entity performing similar functions.
“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Notice of Claim” has the meaning set forth in Section 16.2.

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“Operating Restrictions” means those rules, requirements, and procedures set forth on Exhibit Q.

“Participating Transmission Owner” or “PTO” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Year period during the Delivery Term, e.g., Contract Years 1 and 2, Contract Years 2 and 3, etc.

“Performance Security” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than One Hundred Fifty Million Dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Generating Facility, or has retained a third-party with such experience to operate the Generating Facility.
“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” has the meaning set forth in Section 4.6(a).

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“PV Energy” means that portion of Energy that is delivered from the Generating Facility directly to the Delivery Point, net of Electrical Losses and Station Use, and is not Charging Energy or Discharging Energy.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.
“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy was less than the Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during the Delivery Term during which there is an RA Shortfall Amount.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity, Storage Contract Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.
“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.
“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“Storage Capacity” means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

“Storage Capacity Test” means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Contract Capacity” means the maximum dependable operating capacity (in MW) of the Storage Facility to discharge electric energy for four (4) consecutive hours, which is initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted in accordance with Section 5(b) of Exhibit B and from time to time pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“Storage Facility Loss Factor” is set forth on the Cover Sheet.

“Storage Facility Meter” means the bi-directional meter or meters, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points in accordance with any applicable requirements of CAISO, WREGIS or this Agreement. For
clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“**Storage Facility Metering Points**” means the locations of the Storage Facility Meters shown on Exhibit R.

“**Storage Product**” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“**Storage Rate**” has the meaning set forth on the Cover Sheet.

“**Stored Energy Level**” means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3.

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Transmission Provider**” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.
“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid from the Delivery Point.

“Ultimate Parent” means Origis USA, LLC or Global Atlantic Financial Group.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

   (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

   (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

   (c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

   (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

   (e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

   (f) a reference to a Person includes that Person’s successors and permitted assigns;
ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:
(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 Development: Construction: Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.
For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 Sale of Green Attributes. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 Imbalance Energy. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments related to such Imbalance Energy shall be for the account of Buyer.
3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Section 3.5(b), in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be
responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all of the Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure**

(a) **RA Deficiency Determination.** For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the RA Shortfall Amount, and (ii) the price for CPM Soft Offer Cap as listed in Section 43.A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the **RPS Eligibility Guidebook** (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, subject to Section 3.12, obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.
3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

(a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (“Compliance Costs”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at the **Compliance Expenditure Cap**. Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions.**”

If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not
obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond within the sixty (60) day evaluation period, it shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice and Seller shall have no further obligation to take such Compliance Actions.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities (including enabling the Storage Facility to be charged from the grid); provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller’s Lenders) as set forth in a written agreement executed by the Parties.

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

   (a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation (but without limiting Buyer’s obligation to pay amounts associated with the Storage Facility Loss Factor as expressly provided herein), Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

   (b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy,
and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes associated with the Facility Energy shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer’s designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices, including CAISO requirements applicable to projects similar to the Facility.

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC for the Facility (if applicable) a non-binding forecast of each month’s average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC for the Facility (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Energy, and (iv) Stored Energy Level, in each case, for each Settlement Interval of each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each Settlement Interval of each hour, Seller’s best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy, and (iv) Stored Energy Level. These Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided...
in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity, (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change, Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Seller shall also provide access to routinely updated forecasts for each Settlement Interval of each hour of the expected Energy. Such real-time forecasts of Energy shall be provided by the CAISO, or if the CAISO does not provide such forecasts for the Facility then such forecasts shall be provided by an Approved Forecast Vendor. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer; provided that Buyer specifies the method no later than twenty (20) Business Days prior to the effective date of such requirement (or such longer period as may be reasonably necessary to implement the requested method). In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail or electronic feed to Buyer (or in another mutually-agreed format).

(e) **Forced Facility Outages.** Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) **Forecasting Penalties.** Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) **CAISO Tariff Requirements.** To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.
4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order, Buyer Curtailment Order or notice is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall, subject to the last sentence of this Section 4.4(d), take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with this Section 4.4(d). For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to
the Compliance Expenditure Cap as set forth in Section 3.12.

4.5 **Charging Energy Management.**

(a) 

...
4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.**

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall
be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy, (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability.**

(a) 

(b) 

4.9 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS
Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.11 **Green-E Certification.** Seller shall, at its sole expense but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that the Facility is eligible for Green-e certification.

4.12 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity available or allocable to the Facility for all purposes under the Interconnection Agreement that is no less than the Dedicated Interconnection Capacity for the Facility during the Test Energy period and throughout the Delivery Term.

**ARTICLE 5**

**TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.
ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall materially comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer’s emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller’s Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7
METERING

7.1 Metering.

(a) Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use from the Facility to the Delivery Point, as applicable. Seller shall measure the PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Seller will also provide any additional meters required by CAISO (e.g., auxiliary meters), WREGIS, or this Agreement and all meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost.

(b) Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Generating Facility and a single CAISO resource ID dedicated exclusively to the Storage Facility. Seller shall not (i) obtain a single CAISO resource ID for the Facility or (ii) obtain additional CAISO resource IDs for the Generating Facility, the Storage Facility, or the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional
CAISO resource IDs incurred by Seller shall be reimbursed by Buyer; provided, that Seller shall not be required to make any changes that will jeopardize any Tax Credits.

(c) Metering shall be consistent with the requirements of this Agreement, the CAISO Tariff, and to the extent applicable, WREGIS, and to the extent not inconsistent with the foregoing, the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. As of the Effective Date, the Facility is intended to be configured and metered as a solar photovoltaic electricity generating facility that is co-located and AC-coupled with an electrochemical battery energy storage facility. Seller shall not modify the configuration of this Facility (e.g., change to a hybrid or DC-coupled configuration), or the metering, without the prior written consent of Buyer, not to be unreasonably withheld.

(d) Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

**ARTICLE 8**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy, the amount of PV Energy, the amount of Charging Energy, the amount of Discharging Energy, the amount of Replacement RA delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data
from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds ________________

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the
Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires
prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.
ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be made as specified and addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means), upon successful completion of such transmission, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially
unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1 or 14.2, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a reasonable Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer’s reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(v) if, in any two consecutive Contract Years, the average Monthly Storage Availability is, on an annual basis, less than seventy percent (70%) in each Contract Year;

(vi) if, in any Contract Year during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least seventy-five percent (75%) of the Expected Energy amount;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(x) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
(G) Seller shall fail to renew or cause the renewal of each 
outstanding Letter of Credit on a timely basis as provided in the relevant 
Letter of Credit and as provided in accordance with this Agreement, and in 
o no event less than sixty (60) days prior to the expiration of the outstanding 
Letter of Credit.

11.2 Remedies: Declaration of Early Termination Date. If an Event of Default with 
respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-
Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is 
deemed to be received and no later than twenty (20) days after such Notice is deemed to be 
received, as an early termination date of this Agreement ("Early Termination Date") that 
terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective 
as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as 
liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring 
before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) 
subject to the limitations in Section 11.7, or (ii) the Termination Payment calculated in accordance 
with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including 
specific performance or injunctive relief, except to the extent such remedies are expressly limited 
under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, 
as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and 
exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 Termination Payment. The Termination Payment ("Termination Payment") for 
the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other 
amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a 
single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and 
Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall 
be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a 
Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties 
supplying information for purposes of the calculation of Gains or Losses may include, without 
limitation, dealers in the relevant markets, end-users of the relevant product, information vendors 
and other sources of market information. The Settlement Amount shall not include consequential, 
incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to 
the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into 
replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges 
that (a) the actual damages that the Non-Defaulting Party would incur in connection with the
Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of this Agreement, Seller’s aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

**ARTICLE 12**

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREFIN, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF,
OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. FOLLOWING THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HERUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY
WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining (or causing to be obtained) all permits necessary to construct and operate the Facility.

13.2 Buyer’s Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All
Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

13.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("**Prevailing Wage Requirement**"). Buyer agrees that Seller’s obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

**ARTICLE 14**

**ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions, unless otherwise agreed by the parties to such agreement:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;
(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or
(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender’s cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender’s written request, Buyer must enter into such replacement agreement with Lender or Lender’s designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer’s written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

14.3 Buyer Assignment. Notwithstanding anything to the contrary Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer (“Prepayment Assignee”) of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Prepayment Assignee’s timely payment of amounts due under the PPA, at any time upon not less than thirty (30) days’ notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in form and substance reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Prepayment Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Prepayment Assignee and Buyer.
ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of laws. To the extent enforceable, at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.3 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Mutual Indemnity.**

(a) Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an “**Indemnified Party**” and collectively, the “**Indemnified Group**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “**Indemnifiable Losses**”).

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims.
consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“Claim”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party
will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party’s rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**
ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request,
accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the "Disclosing Party"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Disclosure to Lenders, Etc. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed is bound by Law or contract or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract; Service Contract.**

(a) The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

(b) Each Party intends this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SAN LUIS WEST SOLAR, LLC

By: ______________________
Name: Samir Verstyn
Title: Secretary

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: ______________________
Name: Girish Balachandran
Title: CEO

San Luis West Solar, LLC
EXHIBIT A

FACILITY DESCRIPTION

Site Name: San Luis West Solar

Site includes all or some of the following APNs:  

County: Fresno

CEQA Lead Agency: Fresno County Department of Public Works and Planning

Facility: Solar photovoltaic electricity generating facility that is co-located and AC-coupled with an electrochemical battery energy storage facility in accordance with Section 7.1.

Type of Generating Facility: Solar photovoltaic electricity generating facility

Operating Characteristics of Generating Facility: As-generated, inverter-based, solar photovoltaic

Type of Storage Facility: AC-coupled 4-hour lithium-ion battery energy storage facility

Operating Characteristics of Storage Facility:

- Maximum Stored Energy Level at COD (MWh): 68.75
- Maximum Charging Capacity at COD: 15.625 MW
- Maximum Discharging Capacity at COD: 15.625 MW

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Dedicated Interconnection Capacity for Facility: 62.5 MW

Delivery Point: GATESBK4_7_N001 proxy node

Facility Meter: See Exhibit R

Generating Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

Facility Interconnection Point: Gates Substation (230kV)

Participating Transmission Owner: Pacific Gas & Electric (PG&E)
EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

   (a) “Construction Start” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the “Construction Start Date.” The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   (b) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility or the Guaranteed Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The “Commercial Operation Date” shall be the later of (x) sixty (60) days before the Guaranteed Commercial Operation Date (or such earlier date as may be agreed to by the Parties) or (y) the date specified in the COD Certificate.

   (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

   (b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances:

   (a) a Force Majeure Event occurs; or

   (b) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or

   (c) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date; or

   (d) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority (required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product) by the Expected Construction Start Date, despite the exercise of commercially reasonable efforts by Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a), 4(b), and 4(d) above under the Development Cure Period shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines; provided, however, that only with respect to a Force Majeure Event related to COVID-19, the day-for-day extensions shall not exceed two-hundred forty (240) days. Notwithstanding anything to the contrary, no extension under the Development Cure Period shall
be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

(a)
EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Renewable Rate.** For each MWh of Adjusted Facility Energy in each Settlement Period, Buyer shall pay Seller the Renewable Rate.

(b) 

(c) 

(e) **Curtailment Payments.** Seller shall receive no compensation from Buyer for Facility Energy provided in violation of a Curtailment Order. Buyer shall pay for Deemed Delivered Energy as provided above.

(f) **Storage Rate.** All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by the Availability Adjusted Storage Contract Capacity for such month, as determined under Exhibit P. Without limiting Buyer’s obligation to pay Seller for Discharging Energy included in Adjusted Facility Energy, such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(g) **Test Energy.** Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(h) **Tax Credits.** The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any
Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the delivery and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such

Exhibit D - 1
sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller’s responsibility.

(d) CAISO Settlements. Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“CAISO Charges Invoice”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any such CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer’s Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent, such consent not to be unreasonably withheld.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Gantt chart schedule showing progress on achieving each of the Milestones.
5. Description of any material planned changes to the Facility or the site.
6. Summary of activities during the previous calendar quarter or month, as applicable.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. If applicable, prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

FORM OF AVERAGE EXPECTED ENERGY REPORT

|      | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| FEB  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| MAR  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| APR  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| MAY  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| JUN  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| JUL  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| AUG  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| SEP  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| OCT  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| NOV  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |
| DEC  | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      | 0      |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2

FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT

The following table is provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Available Generating Capacity, MW Per Hour – [Insert applicable month]

|   | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|---|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |

[insert additional rows for each day in the month]

| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |      |
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[(A - B) \times (C - D)\]

where:

\(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

\(B\) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

\(C\) = Replacement price for the Contract Year, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Contract Year, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) latest PCIA forecast of the Renewable Portfolio Standard (RPS) Adder associated with the Market Price Benchmark as determined pursuant to CPUC Decision D 19-10-001, or any successor market price benchmark. Buyer is not required to enter into a replacement transaction in order to determine this amount.

\(D\) = the Renewable Rate for the Contract Year, in $/MWh

“Adjusted Energy Production” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output.

“Lost Output” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

No payment shall be due if the calculation of \((A - B)\) or \((C - D)\) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by [licensed professional engineer] (“Engineer”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Agreement] by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [DATE], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on [DATE].

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [DATE].

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [DATE].
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this_______day of____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Printed Name:______________________

Title:_____________________________
EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“Certification”) of Installed Capacity is delivered by [licensed professional engineer] (“Engineer”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated_________ (“Agreement”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

1. The performance test for the Generating Facility demonstrated peak electrical output of MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“Installed PV Capacity”);

2. The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “Installed Battery Capacity”); and

3. The sum of 1. and 2. is __ MW AC and shall be the “Installed Capacity”.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this_________day of______________, 20____.

[LICENSED PROFESSIONAL ENGINEER]

By:____________________________________

Printed Name: _________________________

Title: ________________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

2. the Construction Start Date occurred on___________(the "Construction Start Date"); and

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:__________________________________________

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the___ day of______

[SELLER ENTITY]

By:__________________________________

Printed Name: _______________________

Title: _____________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:  
Bank Ref.:  
Amount: US$[XXXXXXX]  
Expiry Date:  

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority  
333 W. El Camino Real, Suite 330  
Sunnyvale, CA 94087  
Attn: Girish Balachandran, CEO

Ladies and Gentlemen:

By the order of_________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $[XXXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date ] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in
connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States Dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority, a California joint powers authority

Name and Title of Authorized Representative

Date__________________________

Exhibit K - 3

San Luis West Solar, LLC
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [______], a [_______] (“Guarantor”), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and [SELLER ENTITY], a [_________] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20__. 

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed [______] Dollars ($______). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty.

Exhibit L - 1

San Luis West Solar, LLC
and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or
(ii) any amendment, modification or other alteration of the PPA, or
(iii) any indemnity agreement Seller may have from any party, or
(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of Seller or (c) change in ownership of any membership interests in, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company/corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or

Exhibit L - 3

San Luis West Solar, LLC
affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[___]

Attn: [___]

Fax: [___]

If delivered to Guarantor, to it at

[___]

Attn: [___]

Fax: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force.

Exhibit L - 4

San Luis West Solar, LLC
and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]  

By:_________________________

Printed Name:_________________

Title:________________________

BUYER:

[_____]  

By:_________________________

Printed Name:_________________

Title:________________________

By:_________________________

Printed Name:_________________

Title:________________________

Exhibit L - 6

San Luis West Solar, LLC
EXHIBIT M
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in
 accordance with the terms of that certain Renewable Power Purchase Agreement dated
 (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this
Notice but not otherwise defined herein shall have the respective meanings assigned to such terms
in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA
 product information:

Unit Information¹

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>CAISO Resource ID</th>
<th>Unit SCID</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td></td>
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<tr>
<td>Unit SCID</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td></td>
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</tr>
<tr>
<td>Resource Type</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Point of interconnection with the CAISO</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Controlled Grid (“substation or transmission line”)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LCR Area (if any)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery Period</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
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<tr>
<td>March</td>
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<td>April</td>
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<td>November</td>
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</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ________________________________

Printed Name: ____________________

Title: ______________________________

Date: ______________________________

Exhibit M - 2
## EXHIBIT N
### NOTICES

<table>
<thead>
<tr>
<th>San Luis West Solar, LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Notices:</td>
<td>All Notices:</td>
</tr>
</tbody>
</table>

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Exhibit N - 1

San Luis West Solar, LLC
<table>
<thead>
<tr>
<th>San Luis West Solar, LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
</table>

Exhibit N - 2

San Luis West Solar, LLC
EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. 

Storage Capacity Test Procedures

PART I. GENERAL.
PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) [Redacted]
EXHIBIT P

STORAGE FACILITY AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “Monthly Storage Availability” in a given month using the formula set forth below:

\[
\text{Monthly Storage Availability (\%)} = \frac{\text{MNTHRS}_m - \text{UNAVAILHRS}_m}{\text{MNTHRS}_m}
\]

where:

\(m\) = relevant month “m” in which availability is calculated;

\(\text{MNTHRS}_m\) is the total number of On-Peak Hours for the month;

\(\text{UNAVAILHRS}_m\), is the total number of On-Peak Hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “Excused Event”): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, Buyer Default, Storage Capacity Tests, System Emergencies, Planned Outages not to exceed 50 hours per Contract Year, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in \(\text{UNAVAILHRS}_m\) for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour or that results in unavailability of less than all of the Storage Facility will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the Storage Facility is 50% unavailable for 50% of an hour (but fully available the other 50% of the hour), it will be considered to be unavailable for 25% of the hour).

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is bid in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Exhibit P - 1

San Luis West Solar, LLC
Availability Adjustment

Appendix A

San Luis West Solar, LLC
# EXHIBIT Q

## OPERATING RESTRICTIONS

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

Exhibit Q - 1

San Luis West Solar, LLC
Seller will not be liable for noncompliance with any Charging Notice, Discharging Notice, or other instruction to the extent it conflicts with the Operating Restrictions.
EXHIBIT R
METERING DIAGRAM

Exhibit R - 1
CARBON FREE PRODUCT CONFIRMATION

This confirmation ("Confirmation") confirms the Transaction between Morgan Stanley Capital Group Inc., a Delaware Corporation ("Party A") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Party B"), each individually a "Party" and together the "Parties", dated as of July 21, 2021 (the "Effective Date"). This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of the Master Power Purchase and Sale Agreement dated November 23, 2016 between the Parties (the "Master Agreement"). This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

The Parties agree as follows:

<table>
<thead>
<tr>
<th>Seller: Morgan Stanley Capital Group Inc.</th>
<th>Buyer: Silicon Valley Clean Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product:</strong> Carbon Free Product</td>
<td></td>
</tr>
<tr>
<td><strong>Contract Price:</strong></td>
<td></td>
</tr>
<tr>
<td>&quot;Contract Price&quot; shall be equal to the sum of (1) the Flat Price, and (2) the Carbon Free Premium, where: &quot;Flat Price&quot; is equal to and &quot;Carbon Free Premium&quot; is equal to</td>
<td></td>
</tr>
<tr>
<td><strong>Contract Quantity:</strong></td>
<td></td>
</tr>
<tr>
<td>1. [Blank] per hour during the Delivery Term</td>
<td></td>
</tr>
<tr>
<td>2. [Blank] per year (the &quot;Annual Quantity&quot;). The Annual Quantity is a firm quantity.</td>
<td></td>
</tr>
<tr>
<td><strong>Minimum Monthly Carbon Free Energy Quantity (MWh):</strong></td>
<td>[Blank] until the Annual Quantity has been met. For each MWh of the Minimum Monthly Carbon Free Energy Quantity that Seller fails to deliver, Seller shall make a liquidated payment in accordance with Section 1.2(b) of this Confirmation.</td>
</tr>
<tr>
<td><strong>Delivery Term:</strong></td>
<td>[Blank] inclusive</td>
</tr>
<tr>
<td><strong>Carbon Free Energy Delivery Point:</strong></td>
<td>CAISO balancing authority area</td>
</tr>
<tr>
<td><strong>CAISO Energy Delivery Point:</strong></td>
<td>NP15 EZ GEN HUB</td>
</tr>
<tr>
<td><strong>CAISO Energy Delivery Hours:</strong></td>
<td>Monday through Sunday HE 0100 through 2400 (24 Hours)</td>
</tr>
<tr>
<td><strong>CAISO Energy Quantity (MW):</strong></td>
<td>[Blank]</td>
</tr>
</tbody>
</table>

This Confirmation is subject to the General Terms and Conditions and the Exhibit identified below and attached hereto:

Exhibit A – Carbon Free Sources

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

MORGAN STANLEY CAPITAL GROUP INC.

Sign: [Signature]
Print: Karen Kocherces
Title: Vice President

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: [Signature]
Print: Girish Balachandran
Title: Chief Executive Officer
GENERAL TERMS AND CONDITIONS:

1. **PRODUCT**

1.1 **Product.** For the Carbon Free Energy component of the Product delivered under this Confirmation, Seller shall use one or more Carbon Free Sources set forth in Exhibit A; provided however, Seller may designate additional Specified Sources as Carbon Free Sources upon five (5) days’ prior written notice to Buyer thereof; provided that such additional Specified Sources shall meet the requirement of Carbon Free Source as defined herein.

1.2 **Seller Delivery Obligation.**

(a) Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the Contract Quantity of the Product.

(b) The Contract Quantity is a firm obligation of Seller. If Seller fails to deliver the Contract Quantity of the Product, or any component thereof, Buyer shall be entitled to receive from Seller amounts calculated as follows:

(i) with respect to the CAISO Energy component of the Product, Buyer shall be entitled to receive from Seller an amount calculated in accordance with Article Four of the Master Agreement; provided, that the Replacement Price shall be calculated based on the costs reasonably incurred by Buyer to purchase such substitute Product, or in the absence of a purchase, the market price for the Product at the Delivery Point as determined by Buyer in a commercially reasonable manner.

(ii) With respect to the Carbon Free Energy component of the Product, for (A) each MWh of the Minimum Monthly Carbon Free Energy Quantity that Seller fails to deliver and (B) each MWh of the Annual Quantity that Seller fails to deliver, as applicable, Buyer shall be entitled to receive from Seller an amount calculated in accordance with Article Four of the Master Agreement; provided, that the Replacement Price shall be calculated based on the costs reasonably incurred by Buyer to purchase such substitute Carbon Free Energy, or in the absence of a purchase, the market price for the Carbon Free Energy as determined by Buyer in a commercially reasonable manner, including by reference to prevailing market prices for carbon compliance instruments. The Parties acknowledge and agree that the foregoing amounts that may be due shall be determined without duplication of recovery for each of a monthly deficiency or an annual deficiency.

2. **DELIVERY TERM.** This Confirmation shall be in full force and effect as of the Effective Date. The Parties' obligations with respect to the delivery of the Product during the Delivery Term shall continue after the Delivery Term and this Confirmation shall terminate on the date on which both
Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

3. **SCHEDULING.** Seller, or its designated scheduling coordinator, will perform all scheduling requirements applicable to the Transaction contemplated under this Confirmation. All scheduling will be performed consistent with all applicable CAISO and WECC prevailing protocols. The Carbon Free Energy will be scheduled by the Seller from the Carbon Free Sources into CAISO without substituting electricity from another source. For greater certainty, the Parties hereby acknowledge and agree that the Contract Quantities of Carbon Free Energy shall be evidenced by the lesser of the metered Carbon Free Energy quantity generated by the Carbon Free Source and the NERC e-Tag showing the quantity of Carbon Free Energy scheduled into CAISO. For greater certainty, no NERC e-Tags will be generated for deliveries from a Carbon Free Source within the CAISO Balancing Authority. Each month the Seller will deliver at least the Minimum Monthly Product Quantity (MWh) of Carbon Free Energy until the Annual Quantity has been met. IST scheduling for CAISO Energy will be complete by the Business Day prior to the day of delivery. Scheduling to be completed by 9:00 a.m. Pacific Prevailing Time (PPT).

**e-Tagging:** Each e-tag for Carbon Free Energy from an out-of-state Carbon Free Source will include the following, depending on the Carbon Free Source from which Carbon Free Energy is delivered:

<table>
<thead>
<tr>
<th>E-Tag Location</th>
<th>Carbon Free Energy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Last CA (Control Area) under 'Physical Path'</td>
<td>CAISO Balancing Authority</td>
</tr>
<tr>
<td>Last or 'sink' PSE (Purchasing Selling Entity) under 'Physical Path'</td>
<td>SVCE</td>
</tr>
<tr>
<td>NERC Source</td>
<td>As set forth in Exhibit A</td>
</tr>
<tr>
<td>Misc(Token/Value) field</td>
<td>As set forth in Exhibit A</td>
</tr>
<tr>
<td>Comment field</td>
<td>As set forth in Exhibit A</td>
</tr>
</tbody>
</table>

4. **MONTHLY BILLING SETTLEMENT.**

4.1 **Payment.** For each month during the Delivery Term, (a) Buyer shall pay Seller an amount equal to the Flat Price multiplied by CAISO Energy Quantity delivered during such month, and (b) Buyer shall pay Seller an amount equal to the Carbon Free Premium multiplied by the Carbon Free Energy delivered during such month. Seller shall be entitled to retain all revenues associated with delivery of the Product to the CAISO. Each Party will settle this Transaction by making the payments required by this Transaction and by submitting, via the CAISO's IST process, IST schedules to the CAISO consistent with the terms of this Transaction before the applicable IST deadline. If there is a failure with the submission of IST schedules that match this Transaction, the Parties shall work together to make such adjustments as are necessary to put the parties in the same position they would have been in if the proper IST submissions had been made.
4.2 **Monthly Invoice Timeline.** Buyer shall pay undisputed invoice amounts on or before the twenty-third (23rd) day of the month in which the invoice was received, provided that such invoice was received by the fifteenth (15th) day of the month, otherwise the invoice will be paid on the next month’s monthly distribution date under the Security Documents (i.e., the 23rd of the month).

Seller’s invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer; provided, however, that changes to invoice, payment, wire transfer and other banking information on the Cover Sheet must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Cover Sheet.

5. **TRACKING OF CARBON FREE ENERGY QUANTITY DELIVERIES.**

(a) Seller shall be responsible for meeting all requirements for delivery and verification of Carbon Free Energy imports, including NERC e-Tags. In addition, Seller shall produce NERC e-Tags in a format that adequately demonstrates that Buyer is purchasing a Carbon Free Energy product hereunder.

(b) Seller shall provide Buyer, within a reasonable time after request, (i) proof of the veracity of the representations made by Seller in Section 7 herein and (ii) hourly meter data or an equivalent report showing the actual generation for the Carbon Free Sources.

(c) Seller, upon the reasonable request of the Buyer, will deliver additional documents and information related to this Transaction to Buyer; provided however such obligation is only to the extent such information is either (i) in the Seller’s possession or (ii) reasonably available to Seller.

6. **COMPLIANCE REPORTING.** For Carbon Free Energy delivered pursuant to this Confirmation that is imported into California, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation (as such term is defined in the Cap and Trade Regulations) under the Cap and Trade Regulation associated with any imported Carbon Free Energy that Seller schedules and delivers to the CAISO Balancing Authority and that they will work together such that Seller may claim that such Carbon Free Energy is from a Specified Source to mitigate such Compliance Obligation. Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to the Product.

7. **SELLER REPRESENTATIONS AND WARRANTIES.** Seller hereby represents and warrants to Buyer that:

(a) it has the right to sell the Carbon Free Energy;

(b) the Carbon Free Energy has never been sold for any other purpose or use;
the Carbon Free Energy is free and clear of all liens or other encumbrances;

(d) as of the Effective Date of this Confirmation, the Carbon Free Sources have been assigned an emissions factor of zero (0) by CARB as reported by CARB; and

(e) it is one of: (i) the owner or operator of the Carbon Free Sources with prevailing rights to sell the electricity sold hereunder, or (ii) is selling or remarketing electricity procured pursuant to a Specified Source Transaction from the Carbon Free Sources through the market path and possesses or has the right to obtain copies of written documents that the energy it is reselling or remarketing was procured pursuant to Specified Source transaction(s) from the Carbon Free Sources through the market path.

8. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

9. **COMPLIANCE WITH SECURITY DOCUMENTS.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents.

10. **BUYER LIMITED ASSIGNMENT.** Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("Limited Assignee") that has creditworthiness that is equal to or better than the creditworthiness of Buyer (measured as of the Effective Date) of Buyer’s right to receive the Product and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Limited Assignee’s timely payment of amounts due under the Agreement, at any time upon not less than thirty (30) days’ Notice by delivering a written request for such assignment, which request must include a proposed form of agreement reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee’s reasonable requests for “know-your-customer” and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted delivery schedules, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller’s ability to make the representations and warranties contained therein.

11. **DEFINITIONS.** Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

   "ACS" means "asset-controlling supplier" as that term is defined in the Cap and Trade Regulations.

   "Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

   "CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.
"CAISO Energy" means a quantity of Energy equal to the hourly quantity without Ancillary Services that is or will be scheduled as an Inter-SC Trade pursuant to the CAISO Tariff for which the only excuse for failure to deliver or receive is an Uncontrollable Force. Terms that are capitalized, but not defined in this definition shall have the meaning ascribed to them in the CAISO Tariff.

"CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

"Carbon Free Energy" means Energy deliveries from Carbon Free Sources.


"Carbon Free Source" means any Specified Source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, sections 95100 to 95133). Carbon Free Source does not include any Renewable Energy Credits or any Energy source with an e-tag with a source point associated with a nuclear or coal-fired generating resource.

"Change in Law" has the meaning set forth in Section 2.2 hereof.

"Commercially Reasonable Efforts" for the purposes of this Confirmation, "commercially reasonable efforts" or acting in a "commercially reasonable manner" shall not require a Party to undertake extraordinary or unreasonable measures.

"Compliance Obligation" has the meaning set forth by the Cap and Trade Regulations.

"CPUC" means the California Public Utilities Commission.

"Customers" means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Santa Clara.

"Delivery Term" has the meaning set forth on page 1 of this Confirmation.

"Effective Date" has the meaning set forth on page 1 of this Confirmation.

"Energy" means electrical energy, measured in MWh.

"Exhibits" shall be those certain Exhibits, which are attached hereto and made a part hereof.

"FERC" means the Federal Energy Regulatory Commission.
“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Source” means an electricity generating facility that is a “specified source”, as such term is defined in the Mandatory Reporting Rule.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract.
# EXHIBIT A

## CARBON FREE SOURCES

<table>
<thead>
<tr>
<th>Carbon Free Source</th>
<th>Fuel Source</th>
<th>CARB ID</th>
<th>Location</th>
<th>Emissions Factor (MT CO₂e per MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priest Rapids</td>
<td>Hydroelectric</td>
<td>5000054</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Wanapum</td>
<td>Hydroelectric</td>
<td>5000054</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Rocky Reach</td>
<td>Hydroelectric</td>
<td>5000055</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Rock Island</td>
<td>Hydroelectric</td>
<td>5000003</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Lake Chelan</td>
<td>Hydroelectric</td>
<td>5000040</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Boundary</td>
<td>Hydroelectric</td>
<td>5000043</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Lucky Peak</td>
<td>Hydroelectric</td>
<td>5000046</td>
<td>Idaho</td>
<td>0</td>
</tr>
<tr>
<td>Wells</td>
<td>Hydroelectric</td>
<td>500237</td>
<td>Washington</td>
<td>0</td>
</tr>
<tr>
<td>Kerr (Selli's Kanka Qispe')</td>
<td>Hydroelectric</td>
<td>5000014</td>
<td>Montana</td>
<td>0</td>
</tr>
</tbody>
</table>