



Liz Gibbons, Chair
City of Campbell

George Tyson, Vice Chair
Town of Los Altos Hills

Jon Robert Willey
City of Cupertino

Zach Hilton
City of Gilroy

Neysa Fligor
City of Los Altos

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

**Silicon Valley Clean Energy Authority
Board of Directors Meeting**

Wednesday, November 9, 2022
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

Teleconference Meeting
Webinar:

<https://cityofcupertino.zoom.us/j/94163712123>

Telephone (Audio Only):
US: +1 669-900-6833
Webinar ID: 941 6371 2123

In accordance with California Government Code Section 54953(e), in consideration of the Coronavirus (COVID-19), members of the Silicon Valley Clean Energy Board of Directors and staff have the option to participate in this meeting by teleconference.

Members of the public may also attend this meeting in person, or observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting via email up to three hours before the meeting begins to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be distributed to the Board of Directors. The public will also have an opportunity to provide comments during the meeting. Members of the public participating remotely and using Zoom may comment during public comment or the applicable agenda item by using the Raise Hand feature and you will be recognized by the Chair. Those using the telephone (audio only) feature should press star 9 on your phones to initiate the "Raise Hand" function in Zoom. You will then be announced, unmuted, and your time to speak will begin.

The public may provide comments on any matter listed on the Agenda. 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.

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA") please contact Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org prior to the meeting for assistance.

Liz Gibbons, Chair
City of Campbell

AGENDA

George Tyson, Vice Chair
Town of Los Altos Hills

Call to Order

Jon Robert Willey
City of Cupertino

Roll Call

Zach Hilton
City of Gilroy

Public Comment on Matters Not Listed on the Agenda

Neysa Fligor
City of Los Altos

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.

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Consent Calendar (Action)

Javed Ellahie
City of Monte Sereno

1a) Approve Minutes of the October 12, 2022, Board of Directors Meeting

1b) Receive September 2022 Treasurer Report

Yvonne Martinez Beltran
City of Morgan Hill

1c) Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings

Margaret Abe-Koga
City of Mountain View

1d) Approve Fleet Electrification Planning Agreement with Optony Inc. for SVCE Fleet Electrification Technical Assistance Program

Tina Walia
City of Saratoga

1e) Amending Program for SVCE Support of Electric Vehicle Charging in Affordable Housing Developments

Larry Klein
City of Sunnyvale

1f) Approve Scholarship Funds for 2023 Empower SV Short-Film Competition

Otto Lee
County of Santa Clara

1g) Adopt Resolution Approving SVCE Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1

1h) Adopt Resolution Authorizing the Chief Executive Officer to Negotiate and Execute Contracts up to \$300,000 for Recruiting Purposes for 180 Days

1i) Executive Committee Report

1j) Finance and Administration Committee Report

1k) Audit Committee Report

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087



Liz Gibbons, Chair
City of Campbell

1l) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report

George Tyson, Vice Chair
Town of Los Altos Hills

1m) California Community Power Report

Jon Robert Willey
City of Cupertino

Regular Calendar

Zach Hilton
City of Gilroy

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)

Neysa Fligor
City of Los Altos

4) Community Resilience Program Update (Presentation)

Rob Rennie
Town of Los Gatos

5) New Construction Reach Code Update (Presentation)

Evelyn Chua
City of Milpitas

Board Member Announcements and Direction on Future Agenda Items

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Adjourn

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, October 12, 2022

7:00 pm

Cupertino Community Hall

10350 Torre Avenue

Cupertino, CA

Pursuant to State of California Gov't Code Section 54953 (e) the meeting was conducted via teleconference with an option for members of the Board of Directors and staff to participate in person.

DRAFT MINUTES

Call to Order:

Chair Gibbons called the meeting to order at 7:01 p.m.

Roll Call

Present:

Liz Gibbons (Chair), Campbell
George Tyson (Vice Chair), Los Altos Hills
Jon Robert Willey, Cupertino
Zach Hilton, Gilroy
Neysa Fligor, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Bryan Mekechuk, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill (arrived during Item 3)
Margaret Abe-Koga, Mountain View
Tina Walia, Saratoga
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County

Absent:

Chair Gibbons, Vice Chair Tyson, Alternate Director Mekechuk and Director Willey attended in person; all other Directors attended via teleconference.

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

There were no questions or comments from the Board; there were no requests from the public to speak on any matter on the Consent Calendar.

1a) Approve Minutes of the September 14, 2022, Board of Directors Meeting

- 1b) Approve Minutes of the September 14, 2022, Board of Directors Special Meeting
- 1c) Receive August 2022 Treasurer Report
- 1d) Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings
- 1e) Adopt FY23 SVCE Strategic Work Plan
- 1f) Authorize the Chief Executive Officer to Negotiate and Enter into a New Engagement with Meyers | Nave for Legal Services
- 1g) Review and Approve Updates to SVCE Customer Confidentiality Policy
- 1h) Approve Audit Committee Membership of Three Members
- 1i) Receive Q3 2022 Decarbonization Strategy and Programs Roadmap Update
- 1j) Executive Committee Report
- 1k) Finance and Administration Committee Report
- 1l) Audit Committee Report
- 1m) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report
- 1n) California Community Power Report

MOTION: Vice Chair Tyson moved and Alternate Director Mekechuk seconded the motion to approve the Consent Calendar, Items 1a through 1n.

The motion carried unanimously by verbal roll call vote with Director Martinez Beltran absent.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran addressed the following in his CEO report:

- Introduction of new Director of Energy Services and Community Relations Adam Selvin, who provided brief welcome comments;
- Reintroduction of Don Bray, transitioning to a different role with SVCE as Director of Strategic Development, who provided brief comments.

Board members welcomed Director of Energy Services and Community Relations Selvin and congratulated Director of Strategic Development Bray.

3) Approve SVCE 2022 Integrated Resource Plan (Action)

Director Martinez Beltran joined the meeting during Item 3.

Maren Wenzel, Senior Manager of Energy Policy and Regulatory Analysis, presented a PowerPoint presentation on SVCE's 2022 Integrated Resource Plan. The presentation included background, core goals of SVCE, portfolio results, key themes for the narrative, and staff's proposal of adoption of 100% CF/65% RPS case.

Senior Manager of Energy Policy and Regulatory Analysis Wenzel outlined staff's request for approval:

- File the 100% CF/65% RPS by 2030 plan as its Preferred Conforming Plan;
- File the 100% CF/ 75% RPS by 2030 plan and 100% CF/ 100% RPS by 2035 plan as Conforming Plans;
- In the narrative staff will highlight:
 - Portfolios are illustrative and may not be realized

- CPUC must vet the “IRP compliance” proposal fully with stakeholder input before holding LSEs to their IRP filings
- Delegate authority of the CEO to provide final approval of the 2022 SVCE IRP to be filed on November 1st, 2022.

It was noted SVCE would provide board members a copy of the final IRP once prepared.

Senior Manager of Energy Policy and Regulatory Analysis Wenzel responded to board member questions.

Chair Gibbons opened Public Comment.

Bruce Karney thanked staff for the analysis and asked two questions related to 1) Diablo Canyon and 2) the possibility of a carbon tax, carbon fee and dividend.

Chair Gibbons closed Public Comment.

Senior Manager of Energy Policy and Regulatory Analysis Wenzel responded to Mr. Karney's inquiries.

MOTION: Alternate Director Mekechuk moved and Director Willey seconded the motion to delegate authority to the Chief Executive Officer to provide final approval of the 2022 IRP to be filed on November 1, 2022.

The motion carried unanimously by verbal roll call vote.

4) Authorize the Chief Executive Officer to Approve or Execute Agreements with Firms Providing Services to Initiate SVCE to Execute Its Second Prepay (Action)

Amrit Singh, CFO and Director of Administrative Services, introduced the item and presented a PowerPoint presentation which addressed an overview of the request to authorize agreements to initiate the second prepay transaction, information on leveraging the first prepay structure and fiscal impact of the second prepay, and next steps.

CFO and Director of Administrative Services Singh provided the proposed firms and costs for the second prepay, noting staff was requesting approval for \$1,000,000 to allow for a 10% contingency that may be needed:

Firms	Role	First Prepay Cost	Proposed Cost for the Second Prepay
Public Financial Management (PFM)	Municipal Advisor: Advises prepay buyer in negotiations; required by Municipal Securities Rulemaking Board (MSRB)	\$250,000	\$175,000
Chapman & Cutler	Disclosure and Issuer's Counsel: Provides legal counsel and prepares official statement and prospectus	\$310,000	\$200,000
Ballard Spahr*	Bond and Tax Counsel: Represent bondholders and provide tax opinion on the transaction	\$425,000*	\$300,000
Moody's Investor Service Inc	Rating Agency: Provides the credit rating for the bonds	\$315,000	\$230,000
Total		\$1,300,000	\$905,000

** For the first Prepay, SVCE worked with Orrick, Herrington & Sutcliffe as the bond and tax counsel at a higher cost of \$425,000.*

CFO and Director of Administrative Services Singh responded to questions from board members regarding the anticipated lower costs of the second prepay and economic uncertainty.

Chair Gibbons opened Public Comment.
No speakers.
Chair Gibbons closed Public Comment.

MOTION: Director Chua moved and Director Klein seconded the motion to adopt Resolution 2022-23 to authorize the Chief Executive Officer to approve or execute agreements with firms providing services to initiate SVCE to execute the second prepay transaction.

Board Clerk Andrea Pizano clarified with the maker of the motion and seconder that the motion would also include approving engagement with Morgan Stanley as the Prepay Supplier; Director Chua and Director Klein concurred.

Director Chua added approval of the total cost requested for the agreements with firms providing services in the amount of \$1,000,000.

The motion carried unanimously by verbal roll call vote.

5) Updating SVCE's Investment Policy and Directing PFM Asset Management to Implement full Scope of work as SVCE's Investment Advisor (Action)

Amrit Singh, CFO and Director of Administrative Services, introduced the item and Monique Spyke of PFM Asset Management (PFMAM); both presented PowerPoint presentations on the item.

The objective and timeline, cashflow analysis, investment policy revision and investment recommendations, and next steps were included in the presentations.

Ms. Spyke responded to a question from Vice Chair Tyson regarding municipal bonds; Chair Gibbons confirmed the work performed by PFMAM to date had not yet had a cost to SVCE, the contracts incorporated had been reviewed by legal counsel, and that our audit reviewers or financial consultants had reviewed the contracts as well. CFO Singh noted the contracts had been reviewed by legal counsel and would be incorporated into SVCE's regular auditing procedures.

Chair Gibbons opened Public Comment.
No speakers.
Chair Gibbons closed Public Comment.

MOTION: Director Fligor moved and Vice Chair Tyson seconded the motion to adopt Resolution 2022-24 to revise SVCE's investment policy and to direct PFM Asset Management to implement the full scope of work as SVCE's Investment Advisor, Adopt Resolution 2022-25 to join as Shareholder of the California Asset Management Trust, and Adopt Resolution 2022-26 to join the State's Local Agency Investment Fund.

The motion carried unanimously by verbal roll call vote.

6) New Construction Reach Code Update (Presentation)

Anthony Eulo, Senior Manager of Public Sector Services, presented a PowerPoint presentation providing a status update on reach code efforts.

Board members shared their thanks to staff for assisting in the reach codes process.

Chair Gibbons opened Public Comment.
No speakers.
Chair Gibbons closed Public Comment.

Board Member Announcements and Future Agenda Items

Director Fligor announced the City of Los Altos welcomed a new Sustainability Coordinator and was hopeful they could step in with leading the reach codes process.

Director Lee announced the annual Day on the Bay event occurred October 8, 2022 and thanked SVCE for sponsoring the event with a solar stage.

Director Klein announced the City of Sunnyvale received the Silicon Valley Business Journal's 2022 Best Public City Project for the City of Sunnyvale's new city hall and noted it will be the first Net Zero Energy LEED platinum city hall in the U.S., and thanked SVCE for grant funds in helping to make it possible.

Chair Gibbons announced and recommended a webinar she attended on a report from Next 10 and the Energy Institute at the UC Berkeley Haas School of Business, *"Paying for Electricity in California: How Residential Rate Design Impacts Equity and Electrification."* Chair Gibbons encouraged board members to get on the mailing list for future webinars hosted by the Energy Institute at the UC Berkeley Haas School of Business.

Public Comment on Closed Session

No speakers.

Chair Gibbons announced the Board of Directors would meet in Closed Session at 8:54 p.m.

Convene to Closed Session

Conference with Legal Counsel – Anticipated Litigation

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (one potential case)

The Board of Directors returned from Closed Session at 9:22 p.m.

Board Clerk Andrea Pizano confirmed a quorum of the Board of Directors was present.

Report from Closed Session

Chair Gibbons announced there was nothing to report.

Adjourn

Chair Gibbons adjourned the meeting at 9:23 p.m.

ATTEST:

Andrea Pizano, Board Secretary



TREASURER REPORT

**Fiscal Year to Date
As of September 30, 2022**

(Preliminary & Unaudited)

Issue Date: November 9, 2022

Table of Contents

	<u>Page</u>
Summary	2
Statement of Net Position	4
Statement of Revenues, Expenses & Changes in Net Position	5
Statement of Cash Flows	6-7
Actuals to Budget Report	8-10
Monthly Change in Net Position	11
Investments Report	12
Customer Accounts	13
Accounts Receivable Aging Report	14

SILICON VALLEY CLEAN ENERGY AUTHORITY

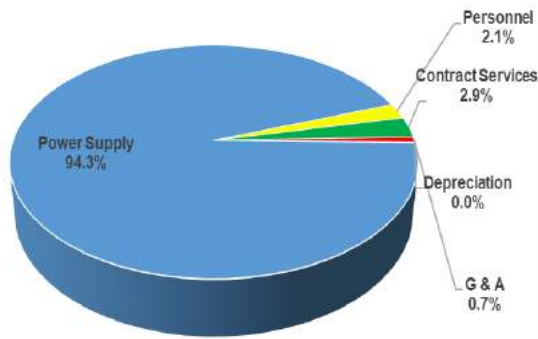
Financial Statement Highlights* (\$ in 000's)

Financial Highlights for the month of September 2022:

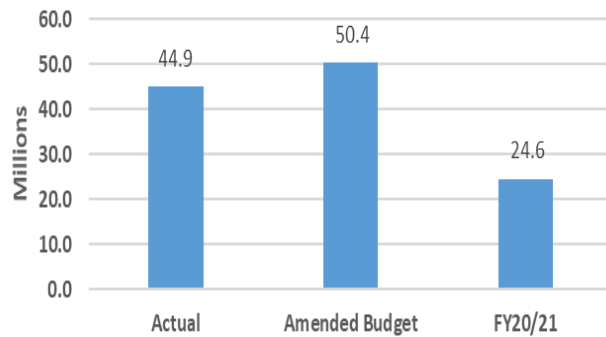
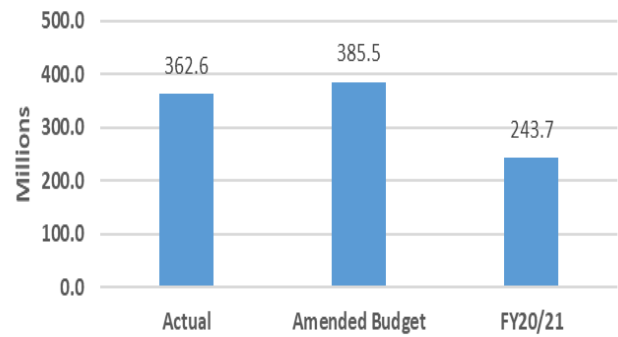
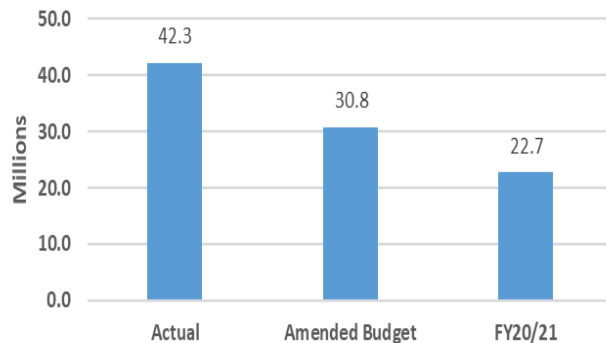
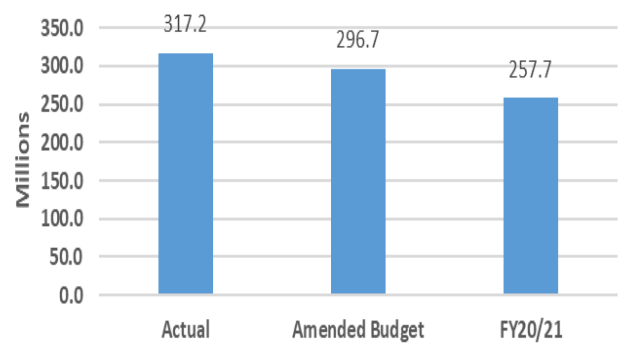
- > SVCE operations resulted in a change in net position for the month of \$2.7 million and fiscal-year-to-date (FYTD) change in net position of \$46.9 million.
- > Retail GWh sales for the month landed -4.2% below budget.
- > FYTD operating margin of \$67 million or ~18.3% is below budget expectations of 28.7% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are 8.7% above budget.
- > SVCE is investing ~93.2% of available funds generating FYTD investment income of \$0.25 million.

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	1,532	(4,526)	(2,237)	(6,275)	(5,774)	1,734	10,904	6,764	13,067	15,819	13,165	2,694	46,866	61,611
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	11,938	15,483	13,478	17,209	15,665	20,556	11,419	14,537	15,435	17,504	17,603	18,647	189,475	
Wholesale Sales	(195)	(15)	-	(82)	(182)	(208)	(236)	(23)	(56)	(18)	(18)	(18)	(1,048)	
Capacity	2,890	2,207	2,324	3,281	3,557	3,544	3,923	4,236	4,965	5,550	7,046	6,964	50,486	
CAISO Charges	(1,301)	205	2,286	1,116	1,004	(328)	(1,124)	(2,066)	1,721	2,130	1,030	2,046	6,721	
NEM Expense	3	152	(187)	(200)	(30)	151	39	617	897	761	674	100	2,979	
Charge/Credit (IST/Net Rev)	1,189	(125)	759	1,855	2,020	3,029	4,966	5,864	7,316	3,955	6,621	12,913	50,363	
Net Power Costs	14,525	17,908	18,660	23,179	22,035	26,744	18,989	23,166	30,279	29,882	32,957	40,653	298,976	274,979
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	4	13	10	-	5	18	-	21	-	56	4	9	141	150
Energy Programs	68	123	116	220	114	134	121	172	112	179	163	161	1,682	8,582
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	302	288	327	322	286	306	284	294	322	347	343	325	3,746	
Retail Sales Budget	302	288	327	322	296	311	297	313	337	350	362	339	3,844	3,844

* The financial results in this report are preliminary and subject to change pending closing of the books for the fiscal year. Any potential changes are not expected to be significant.

YTD EXPENSES**Other Statistics and Ratios**

Working Capital	\$219,414,611
Current Ratio	5.4
Operating Margin	17.5%
Expense Coverage Days	215
Long-Term Debt	\$0
Total Accounts	277,658
Opt-Out Accounts (Month)	88
Opt-Out Accounts (FYTD)	620
Opt-Up Accounts (Month)	(11)
Opt-Up Accounts (FYTD)	200

Retail Sales - Month**Retail Sales - YTD****Controllable O&M - Month****Controllable O&M - YTD**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of September 30, 2022

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 167,673,752
Accounts Receivable, net of allowance	55,663,227
Accrued Revenue	24,311,804
Other Receivables	81,713
Prepaid Expenses	977,927
Deposits	20,565,121
Restricted cash	162,014

Total Current Assets	269,435,558

Noncurrent assets

Capital assets, net of depreciation	357,746
Deposits	45,330

Total Noncurrent Assets	403,076

Total Assets	269,838,634

LIABILITIES

Current Liabilities

Accounts Payable	801,930
Accrued Cost of Electricity	34,736,430
Other accrued liabilities	1,226,576
User Taxes and Energy Surcharges due to other gov'ts	1,693,997
Supplier securit deposits	11,400,000

Total Current Liabilities	49,858,933

Noncurrent Liabilities

Supplier security deposits	7,031,250

Total noncurrent liabilities	7,031,250

Total Liabilities	56,890,183

NET POSITION

Net investment in capital assets	357,746
Restricted for security collateral	162,014
Unrestricted (deficit)	212,428,691
Total Net Position	\$ 212,948,451

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2021 through September 30, 2022

OPERATING REVENUES

Electricity Sales, Net	\$ 358,428,001
GreenPrime electricity premium	1,741,939
Other income	34,548
Liquidated damages	<u>2,371,250</u>
TOTAL OPERATING REVENUES	<u>362,575,738</u>

OPERATING EXPENSES

Cost of Electricity	298,971,624
Contract services	9,058,789
Staff compensation and benefits	6,744,553
General & Administrative	2,319,983
Depreciation	<u>100,428</u>
TOTAL OPERATING EXPENSES	<u>317,195,377</u>
OPERATING INCOME(LOSS)	<u>45,380,361</u>

NONOPERATING REVENUES (EXPENSES)

Grant Income	1,294,077
Interest Income	325,782
Financing costs	<u>(134,255)</u>
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>1,485,604</u>

CHANGE IN NET POSITION

	46,865,965
Net Position at beginning of period	<u>166,082,486</u>
Net Position at end of period	<u>\$ 212,948,451</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS October 1, 2021 through September 30, 2022

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 326,971,086
Receipts from liquidated damages	\$ 2,371,250
Other operating receipts	11,512,299
Payments to suppliers for electricity	(313,073,540)
Payments for other goods and services	(12,071,873)
Payments for staff compensation and benefits	(6,554,946)
Tax and surcharge payments to other governments	(5,469,828)
Net cash provided (used) by operating activities	<u>3,684,448</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Grant revenue received	1,294,077
Finance costs paid	(135,697)
Net cash provided (used) by financing activities	<u>1,158,380</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(141,408)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>325,782</u>
Net change in cash and cash equivalents	5,027,202
Cash and cash equivalents at beginning of year	<u>162,808,564</u>
Cash and cash equivalents at end of period	<u>\$ 167,835,766</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 167,673,752
Restricted cash	<u>162,014</u>
Cash and cash equivalents	<u>\$ 167,835,766</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2021 through September 30, 2022

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

Operating Income (loss)	\$ 45,380,361
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	100,428
Provision for uncollectible accounts	2,052,448
(Increase) decrease in net accounts receivable	(31,725,493)
(Increase) decrease in energy settlements receivable	269,012
(Increase) decrease in other receivables	148,772
(Increase) decrease in accrued revenue	(9,901,184)
(Increase) decrease in prepaid expenses	1,400,309
(Increase) decrease in current deposits	(19,839,037)
Increase (decrease) in accounts payable	(735,446)
Increase (decrease) in accrued cost of electricity	3,821,789
Increase (decrease) in accrued liabilities	585,975
Increase (decrease) in energy settlements payable	87,550
Increase (decrease) in taxes and surcharges due to other governments	638,962
Increase (decrease) in supplier security deposits	11,400,000
Net cash provided (used) by operating activities	<u>\$ 3,684,446</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through September 30, 2022

	FYTD	FYTD	Variance		FY 2021-22	FY 2021-22
	<u>Actual</u>	<u>Amended Budget</u>	<u>\$</u>	<u>%</u>	<u>Amended Budget</u>	<u>Remaining Budget</u>
OPERATING REVENUES						
Energy Sales	\$361,857,141	\$384,498,000	-\$22,640,859	-6%	\$384,498,000	\$22,640,859
Green Prime Premium	1,741,939	1,005,000	736,939	73%	1,005,000	(736,939)
Liquidated damages	2,371,250		2,371,250			
TOTAL OPERATING REVENUES	365,970,330	385,503,000	(19,532,670)	-5%	385,503,000	21,903,920
ENERGY EXPENSES						
Power Supply	298,971,624	274,979,000	23,992,624	8.7%	274,979,000	(23,992,624)
Operating Margin	66,998,706	110,524,000	(43,525,294)	-39%	110,524,000	
OPERATING EXPENSES						
Data Management	3,179,145	3,249,000	(69,855)	-2%	3,249,000	69,855
PG&E Fees	1,182,912	1,450,000	(267,088)	-18%	1,450,000	267,088
Salaries & Benefits	6,744,553	8,535,000	(1,790,447)	-21%	8,535,000	1,790,447
Professional Services	2,854,585	5,669,000	(2,814,415)	-50%	5,669,000	2,814,415
Marketing & Promotions	597,865	908,000	(310,135)	-34%	908,000	310,135
Notifications	136,469	131,000	5,469	4%	131,000	(5,469)
Lease	500,642	525,000	(24,358)	-5%	525,000	24,358
General & Administrative	1,237,349	1,225,000	12,349	1%	1,225,000	(12,349)
TOTAL OPERATING EXPENSES	16,433,520	21,692,000	(5,258,480)	-24%	21,692,000	5,258,480
OPERATING INCOME/(LOSS)	50,565,186	88,832,000	(38,266,814)	-43%	88,832,000	38,266,814
NON-OPERATING REVENUES						
Other Income	34,548	50,000	(15,452)	-31%	50,000	15,452
Investment Income	325,782	300,000	25,782	9%	300,000	(25,782)
TOTAL NON-OPERATING REVENUES	360,330	350,000	10,330	3%	350,000	(10,330)
NON-OPERATING EXPENSES						
Financing	134,255	40,000	94,255	236%	40,000	(94,255)
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	141,499	150,000	(8,501)	-6%	150,000	8,501
Transfer to Programs Fund	6,781,000	6,781,000	-	0%	6,781,000	-
Nuclear Allocation	600,000	600,000	-	0%	600,000	-
Double Down Programs Allocation	17,000,000	17,000,000	-	0%	17,000,000	-
Customer Bill Relief	2,135,063	3,000,000	(864,937)	-29%	3,000,000	864,937
TOTAL OTHER USES	26,657,562	27,531,000	(873,438)	-3%	27,531,000	873,438
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$24,133,699	\$61,611,000	-\$37,477,301	-61%	\$61,611,000	

**SILICON VALLEY CLEAN ENERGY AUTHORITY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through September 30, 2022**

	Amended BUDGET	ACTUAL	ADOPTED BUDGET REMAINING	ACTUAL/ ADOPTED BUDGET
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund	\$ 24,381,000	\$ 24,381,000	\$ -	100.0%
EXPENDITURES & OTHER USES:				
Program expenditures	8,581,851	1,682,483	6,899,368	19.6%
Net increase (decrease) in fund balance	\$ 15,799,149	\$22,698,517		
Fund balance at beginning of period		5,837,711		
Fund balance at end of period		\$28,536,228		

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through September 30, 2022**

	Amended BUDGET	ACTUAL	ADOPTED BUDGET REMAINING	ACTUAL/ ADOPTED BUDGET
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund *	\$ -	\$ -	\$ -	
EXPENDITURES & OTHER USES:				
Program expenditures *	2,850,000	7,322	2,842,678	0.3%
Net increase (decrease) in fund balance	\$ (2,850,000)	(7,322)		
Fund balance at beginning of period		7,990,315		
Fund balance at end of period		\$7,982,993		

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2021 through September 30, 2022

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 24,133,699
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(100,428)
Subtract program expense not in operating budget	(1,682,483)
Subtract CRCR expense not in operating budget	(7,322)
Add back transfer to Program fund	24,381,000
Add back capital asset acquisition	141,499
Change in Net Position	<u>46,865,965</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2021 through September 30, 2022

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 17,365,080	\$ 14,621,707	\$ 17,815,729	\$ 17,228,581	\$ 16,277,554	\$ 29,781,167	\$ 31,256,974	\$ 31,334,686	\$ 44,768,429	\$ 45,749,089	\$ 47,477,127	\$ 44,751,878	\$ 358,428,001
Green electricity premium	80,961	\$ 60,556	\$ 95,594	\$ 462,687	\$ 103,634	\$ 131,601	\$ 116,747	\$ 141,505	\$ 131,322	\$ 132,086	\$ 140,430	\$ 144,816	1,741,939
Other Income	1,000	\$ 2,500	\$ 1,000	\$ 3,500	\$ 2,250	\$ 5,251	\$ 1,000	\$ 2,000	\$ 1,000	\$ 1,000	\$ 2,249	\$ 11,798	34,548
Liquidated damages				922,250	\$ 1,302,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 147,000	\$ -	2,371,250
Total operating revenues	17,447,041	14,684,763	17,912,323	18,617,018	17,685,438	29,918,019	31,374,721	31,478,191	44,900,751	45,882,175	47,766,806	44,908,492	362,575,738
OPERATING EXPENSES													
Cost of electricity	14,524,607	17,907,845	18,660,060	23,179,137	22,034,894	26,743,821	18,988,683	23,163,741	30,278,708	29,881,798	32,956,745	40,651,585	298,971,624
Staff compensation and benefits	448,844	465,162	593,320	572,350	538,861	551,232	540,655	555,023	630,611	555,633	632,345	660,517	6,744,553
Data manager	263,759	263,759	262,863	263,514	264,092	264,817	265,002	-	531,059	266,835	267,264	266,181	3,179,145
Service fees - PG&E	97,254	96,768	104,341	97,053	97,084	97,331	97,671	-	199,269	98,199	98,182	99,760	1,182,912
Consultants and other professional fees	370,413	341,404	376,273	473,924	393,452	363,558	395,856	744,189	28,855	318,955	489,093	400,760	4,696,732
General and administration	209,985	134,289	152,437	306,490	129,063	161,762	179,349	247,909	175,222	255,408	186,506	181,563	2,319,983
Depreciation	7,289	8,162	7,774	7,716	7,853	8,168	8,169	8,558	8,558	9,230	9,351	9,600	100,428
Total operating expenses	15,922,151	19,217,389	20,157,068	24,900,184	23,465,299	28,190,689	20,475,385	24,719,420	31,852,282	31,386,058	34,639,486	42,269,966	317,195,377
Operating income (loss)	1,524,890	(4,532,626)	(2,244,745)	(6,283,166)	(5,779,861)	1,727,330	10,899,336	6,758,771	13,048,469	14,496,117	13,127,320	2,638,526	45,380,361
NONOPERATING REVENUES (EXPENSES)													
Grant Income										1,294,077	-	-	1,294,077
Interest income	18,545	18,382	19,370	18,957	16,791	17,596	15,861	16,059	29,596	39,531	48,479	66,615	325,782
Financing costs	(11,042)	(11,626)	(12,027)	(11,042)	(11,226)	(11,042)	(11,042)	(11,041)	(11,042)	(11,042)	(11,041)	(11,042)	(134,255)
Total nonoperating revenues (expenses)	7,503	6,756	7,343	7,915	5,565	6,554	4,819	5,018	18,554	1,322,566	37,438	55,573	1,485,604
CHANGE IN NET POSITION	\$ 1,532,393	\$ (4,525,870)	\$ (2,237,402)	\$ (6,275,251)	\$ (5,774,296)	\$ 1,733,884	\$ 10,904,155	\$ 6,763,789	\$ 13,067,023	\$ 15,818,683	\$ 13,164,758	\$ 2,694,099	\$ 46,865,965

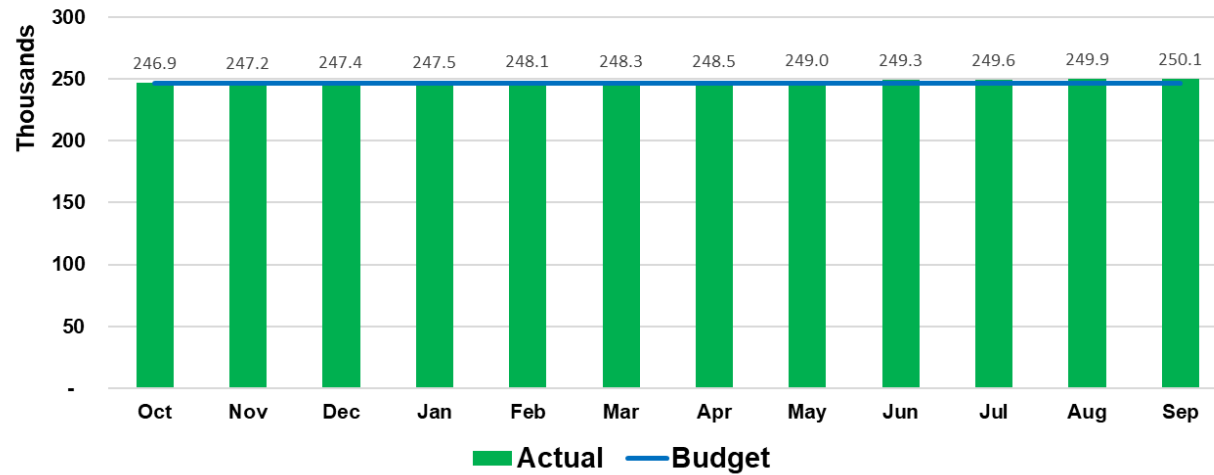
**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2021 through September 30, 2022**

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	YTD <u>Total</u>
	\$18,545	\$18,382	\$19,370	\$18,957	\$16,791	\$17,596	\$15,861	\$16,059	\$29,596	\$39,531	\$48,479	\$66,615	<u>\$325,782</u>
Portfolio Invested													
Average daily portfolio available to invest*	152,976,979	155,897,345	155,743,105	157,270,808	153,138,549	145,837,752	137,341,613	133,261,734	132,574,141	145,457,337	153,975,169	157,084,581	
Average daily portfolio invested	141,994,910	145,456,026	148,530,962	147,297,741	145,363,213	137,891,490	128,040,211	122,422,665	125,005,246	132,803,050	141,713,500	146,382,513	
% of average daily portfolio invested	92.8%	93.3%	95.4%	93.7%	94.9%	94.6%	93.2%	91.9%	94.3%	91.3%	92.0%	93.2%	
Detail of Portfolio													
	<u>Opening Rate</u>	<u>Current Rate</u>		<u>Carrying Value</u>		<u>Interest Earned</u>							
Money Market - River City Bank	1.26%	0.47%		\$153,006,041		\$56,861							

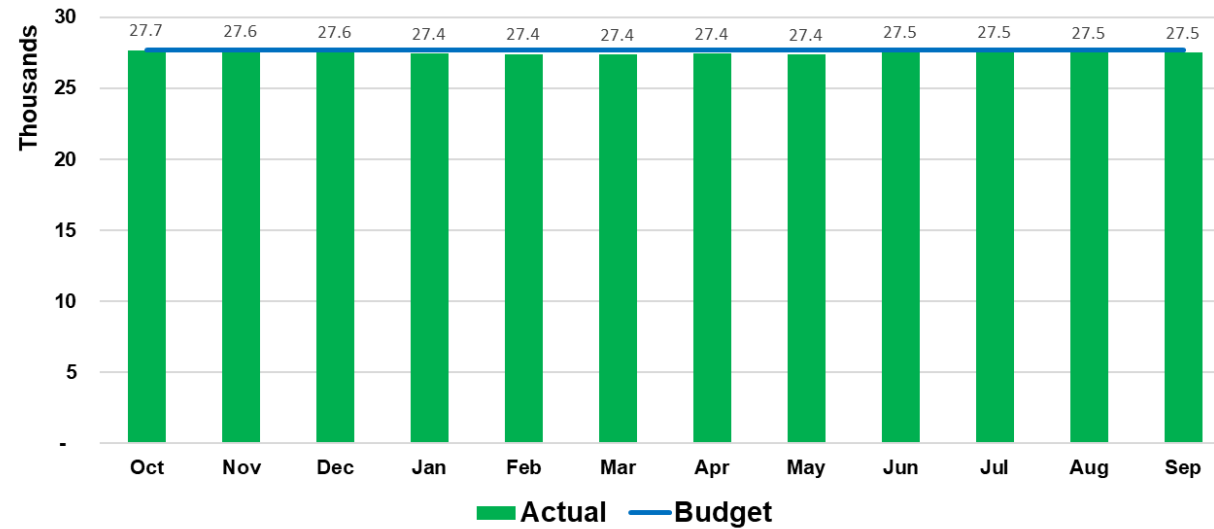
* Note: Balance available to invest does not include lockbox funds.

CUSTOMER ACCOUNTS

RESIDENTIAL ACCOUNTS



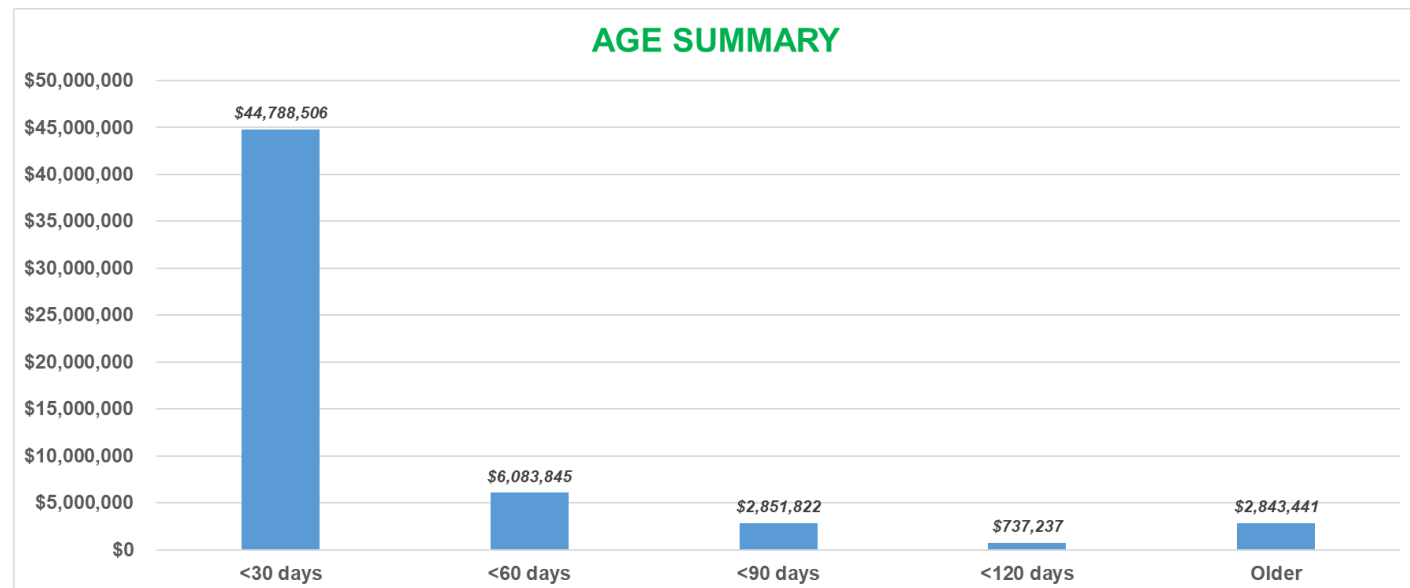
NON-RESIDENTIAL ACCOUNTS



SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	October	November	December	January	February	March	April	May	June	July	August	September
0 to 30 days	74.6%	66.6%	67.7%	70.4%	73.9%	77.7%	83.0%	80.6%	81.6%	84.6%	83.5%	78.2%
31 to 60 days	8.3%	11.6%	9.1%	5.4%	6.9%	6.7%	4.5%	7.6%	7.6%	5.6%	7.7%	10.6%
61 to 90 days	3.1%	3.7%	5.1%	3.9%	2.7%	2.7%	2.2%	2.0%	2.4%	2.4%	2.0%	5.0%
91 to 120 days	2.0%	2.9%	3.0%	3.2%	2.5%	1.7%	1.7%	1.6%	1.3%	1.6%	1.6%	1.3%
Over 120 days	12.0%	15.1%	15.0%	17.1%	14.1%	11.1%	8.6%	8.1%	7.1%	5.9%	5.3%	5.0%

Accounts Receivable Days
54 Days
\$57,304,851
TOTAL DUE
Bad Debt % (<i>Budget</i>)
1%





Staff Report – Item 1c

Item 1c: Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings

From: Trisha Ortiz, General Counsel

Prepared by: Trisha Ortiz, General Counsel

Date: 11/9/2022

RECOMMENDATION

To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-27 making the findings required by Section 54953(e)(3).

BACKGROUND

Pursuant to Government Code Section 54953(b)(3) legislative bodies may meet by “teleconference” only if the agenda lists each location a member remotely accesses a meeting from, the agenda is posted at all remote locations, and the public may access any of the remote locations. Additionally, a quorum of the legislative body must be within the legislative body’s jurisdiction.

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote location, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body’s jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021 Governor Newsom signed [AB 361](#), new legislation that amends the Brown Act to allow local agencies to meet remotely during Governor declared emergencies under certain conditions. AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act’s standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Due to the rise in COVID-19 cases caused by the Delta Variant, on September 21, 2021, the Santa Clara County Health Officer issued a [recommendation](#) that public bodies meet remotely due to the increased protection provided by social distancing. The Health Officer cited “unique characteristics” of government meetings that lead to increased risk of transmission, including the gathering of people from across communities, the need for everybody to participate (including those who are immunocompromised or unvaccinated), and difficulty ensuring compliance with vaccination and safety recommendations. In addition, the Health Officer has described the new Omicron variant as significantly more transmissible than prior variants of the virus.

On October 13, 2021, the Board adopted its Resolution 2021-23 to authorize public meetings to be held via teleconferencing pursuant to Government Code section 54953(e).

Agenda Item: 1c**Agenda Date: 11/9/2022**

Within thirty days after the first teleconferenced meeting held under AB 361, and every thirty days thereafter, in order to continue meeting by teleconference, the local agency's legislative body must find that it has reconsidered the circumstances of the state of emergency and that either: (1) The state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) State or local officials continue to impose or recommend measures to promote social distancing.

The list below identifies the board meeting dates and corresponding resolutions authorizing public meetings to continue to be held via teleconferencing pursuant to Government Code Section 54953(e) and directing staff to return with a resolution to make the findings necessary to continue meeting pursuant to Government Code section 54953(e):

November 10, 2021: 2021-26;
December 8, 2021: 2021-27;
January 12, 2022: 2022-02;
February 9, 2022: 2022-03;
March 9, 2022: 2022-07;
April 13, 2022: 2022-11;
May 11, 2022: 2022-13;
June 8, 2022: 2022-14, and
August 10, 2022: 2022-18;
September 14, 2022: 2022-19; and
October 12, 2022: 2022-22.

STRATEGIC PLAN

SVCE's Board-adopted Strategic Plan identifies engaging the public as a goal of SVCE and remote meetings will better engage the public as long as COVID-19 is a threat to public health.

FISCAL IMPACT

Continuing to conduct remote public Board of Directors and Standing Committee meetings will not increase the cost of meetings.

ANALYSIS & DISCUSSION

The attached Resolution makes the periodic findings necessary to continue holding meetings under Government Code Section 54953(e). Specifically, the attached Resolution makes findings that the Board has reconsidered the circumstances of the COVID-19 state of emergency and that local officials continue to recommend measures to promote social distancing. As required by Government Code Section 54953(e)(3), the resolution makes the findings and provides that the findings will cover the period of time until the next regular meeting of the Board. The resolution applies to both the Board of Directors and its Committees.

Staff will continue to monitor the situation and will return to the Board every 30 days or as needed with additional recommendations related to the conduct of public meetings.

ATTACHMENTS

1. Resolution 2022-27 Reconsidering Circumstances Of The COVID-19 State Of Emergency And Making Findings In Connection Therewith To Authorize Public Meetings To Be Held Via Teleconferencing Pursuant To Government Code Section 54953(e)

SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2022-27

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY RECONSIDERING CIRCUMSTANCES OF THE COVID-19 STATE OF EMERGENCY AND MAKING FINDINGS IN CONNECTION THEREWITH TO AUTHORIZE PUBLIC MEETINGS TO BE HELD VIA TELECONFERENCING PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

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 Board of Directors (“the Board”) of Silicon Valley Clean Energy (“SVCE”) is committed to public access and participation in its meetings while balancing the need to conduct public meetings in a manner that reduces the likelihood of exposure to COVID-19; and

WHEREAS, all meetings of the Board of Directors and the other legislative bodies of SVCE are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the Board and other legislative bodies conduct their business; and

WHEREAS, pursuant to Assembly Bill 361 legislative bodies of local agencies may hold public meetings via teleconferencing pursuant to Government Code Section 54953(e), without complying with the requirements of Government Code Section 54953(b)(3), if the legislative body complies with certain enumerated requirements in any of the following circumstances:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, on March 4, 2020, Governor Newsom declared a [State of](#)

RESOLUTION 2022-27

Emergency in response to the COVID-19 pandemic (the “Emergency”) which remains in effect; and

WHEREAS, the Santa Clara Public Health Officer recommends that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361.

WHEREAS, due to the ongoing COVID-19 pandemic and the need to promote social distancing to reduce the likelihood of exposure to COVID-19, the Board determined that meetings of the SVCE legislative bodies may be held via teleconferencing pursuant to Government Code Section 54953(e).

WHEREAS, to continue meeting pursuant to Government Code Section 54953(e), an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) that any of the following circumstances exist: (a) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

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

Section 1. The Recitals provided above are true and correct and are hereby incorporated by reference.

Section 2. The Board has reconsidered the circumstances of the COVID-19 state of emergency and local officials continue to recommend measures to promote social distancing.

Section 3. The Board and other legislative bodies of SVCE may continue to conduct their meetings pursuant to Government Code section 54953(e).

Section 4. Staff is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution. Such action includes returning to the Board within 30 days and every 30 days thereafter to make the findings required by Section 54953(e)(3).

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 9th day of November 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				2

Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Clerk



Staff Report – Item 1d

Item 1d: Approve Fleet Electrification Planning Agreement with Optony Inc. for SVCE Fleet Electrification Technical Assistance Program

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy;
Anthony Eulo, Senior Manager of Public Sector Services;
Alhad Dighe, Fleet Electrification Fellow

Date: 11/9/2022

RECOMMENDATION

Staff recommends the Board authorize the CEO to execute the attached agreement, with any minor, nonsubstantive modifications also approved by the General Counsel, with Optony Inc. for a total of \$300,000 over 3 years to provide fleet electrification technical assistance to ~10 local fleets.

BACKGROUND

Silicon Valley Clean Energy's mission to reduce greenhouse gas (GHG) emissions within its jurisdiction is supported by the [EVI \(Electric Vehicle Infrastructure\) Joint Action Plan](#) approved in 2019 and goals of the [Decarbonization Strategy & Programs Roadmap](#) approved in 2018. The EVI Joint Action Plan assesses and prioritizes future electric vehicle (EV) charging needs across local communities. It outlines new SVCE programs focused on deployment of charging infrastructure needed to sustain and accelerate rapid adoption of electric vehicles. Part of this joint action plan calls out the need for fleet electrification and describes a general program approach to support member cities and commercial customers in evaluating options to electrify their vehicle fleets.

With transportation contributing about 50% of the GHG's in SVCE's service area, fleet vehicles are a prime target for decarbonization.

ANALYSIS & DISCUSSION

The Fleet Electrification Technical Assistance Program (FETA) is designed to provide technical assistance to at least 5 member agencies fleets and 5 private fleets. By providing hands-on technical assistance through a consultant along with leveraging local and federal incentives, we aim to enable fleets to replace their current vehicles with suitable EV's. This assistance is timely for member agencies as the California Air Resources Board clean fleet regulations consider public fleets as early action market segment¹ and their target 2024 clean vehicle procurement standards are fast approaching.

The Fleet Electrification Program's technical assistance will provide public and private fleet managers with a range of tools as they prepare for an EV fleet transitions. The proposed full technical assistance package available to fleets is outlined below.

¹ https://www.pge.com/pge_global/common/pdfs/solar-and-vehicles/your-options/clean-vehicles/charging-stations/ev-fleet-program/advanced-clean-fleet-rule.pdf

Agenda Item: 1d**Agenda Date: 11/9/2022**

- 1. Fleet replacement plans:** An analysis of the fleet vehicles in use along with a replacement plan that identifies suitable EV alternatives with data on the total cost of ownership and costs/benefits through electrification.
- 2. Charging Infrastructure Plan:** Analysis of the charging needs for the selected EV fleet and project plans for the installation of EV chargers. Includes an energy needs assessment which will help fleet operators estimate what charging infrastructure will be required to fuel their EV fleet.
- 3. Construction Engineering:** Electrical drawings and site designs to accelerate project planning and permitting.
- 4. Funding Plan:** Recommend funding opportunities for both fleet purchases and EVI installation from various sources.
- 5. Charge Optimization Plan:** An analysis of managed and unmanaged charging costs to provide a full overview of total cost benefits.

The participating fleet operators are welcome to employ as little as one or all the above service offerings all at no cost to the fleet operator. Once the initial fleet replacement plan is developed, staff will meet with the fleet operator to discuss their response and their interest in moving forward with the additional services. SVCE will require some form of commitment or "gate" for construction-engineering/late-stage services to ensure the projects we assist have a high likelihood of completion. All fleets are welcome to utilize fleet planning services.

There is also opportunity to employ the services of ProspectSV, for Fleet analysis and Funding plans free of cost to both participating fleets and SVCE (they are funded by the CEC to provide these services through April 2023). We foresee this synergy of technical assistance providers as an opportunity to reduce some of the costs for the initial planning services from Optony - leaving a larger budget for their other range of services.

SVCE will not be providing incentives for vehicles or EV charging as a part of this program, focusing instead on the development of plans and support for fleet operators in accessing other sources of funds.

Versions of the technical assistance packages developed for participants will be publicly posted online as resources for other similar fleet operators to access and leverage. SVCE hopes to attract a variety of fleet types to participate to help the results be scalable to many other fleets in SVCE territory.

Optony was chosen as the service provider of choice through a "piggybacking" process with Peninsula Clean Energy (PCE). PCE released an RFP in January 2022 and followed their competitive solicitation process to select Optony as the consultant for their electric vehicle transition assistance program. SVCE staff supported their procurement process by serving as a rater on their oral board. In August 2022, PCE entered into a contact with Optony and began implementation. Due to the similarities of scope of work in the PCE electrification program and confirming that their selection process meets SVCE procurement standards, piggybacking on PCE's contract with Optony is the most effective way to proceed with this program.

STRATEGIC PLAN

Engaging in a Fleet Electrification Technical Assistance Program is aligned with the Strategic Plan Goal of "Coordinate development of decarbonization and resilience strategy, lead design of local policy and programs, and support program deployment."

ALTERNATIVE

The Board could direct staff to proceed with a new procurement process, instead of piggybacking on PCE's, or could direct staff to postpone or amend the proposed project.

FISCAL IMPACT

No monetary impact as the funding for this program has already been approved under the EVI Joint Action Plan.

Agenda Item: 1d

Agenda Date: 11/9/2022

ATTACHMENTS

1. Draft Agreement with Optony Inc. for Fleet Electrification Technical Assistance

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
OPTONY INC.
FOR
Fleet Electrification Technical Assistance**

THIS AGREEMENT, is entered into this [Click here to enter DAY.](#) day of [ENTER MONTH., ENTER YEAR.](#), by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and OPTONY INC. , a California Corporation (C- Corp) whose address is 5201 Great America Pkwy, Suite 320, Santa Clara, CA 95054 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

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. Consultant 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 Consultant desire to enter into an agreement for Fleet Electrification Technical Assistance upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on December 1 2022, and shall terminate on December 1 2025, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Three Hundred Thousand dollars (\$300,000.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Consultant and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant 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. Consultant shall be responsible to Authority for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant 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 Consultant 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 Consultant. 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 Consultant under this Agreement up to the amount of the cost of correction.

6. **INDEPENDENT PARTIES**

Authority and Consultant 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 Consultant, 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 Consultant'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 Consultant, 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 Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant 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 Consultant's personnel practices. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this section.

7. **NO RECOURSE 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. Consultant 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, Consultant, and any subconsultant under the Consultant, 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, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. To the fullest extent permitted by law, Consultant 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 Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant 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. Consultant 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. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

B. Limits of Liability. To the fullest extent permitted by law, the total liability, in the aggregate, of Contractor, Contractor's officers, directors, owners, partners, employees, agents, and subconsultants, to PCEA, and anyone claiming by, through, or under PCEA for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the required limits of insurance in this Contract. The liability limit in this section will not apply to any claim, damage or liability due to gross negligence or willful misconduct. Client further covenants that it will not, under any circumstances, bring a lawsuit, demand, or claim of any kind against

Contractor's individual employees, officers, directors or agents and that Client's sole remedy will be against Contractor.

B. **Intellectual Property Indemnification.** Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation.

C. The acceptance of the services by Authority shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

D. Consultant'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, Consultant 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 "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant'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." Consultant 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.** Consultant 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, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive

liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Consultant 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 Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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 Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

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**

Consultant 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. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant'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, Consultant may perform similar services for other clients, but Consultant 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 Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in

connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant 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**

Consultant 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 Consultant 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 Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, 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 Consultant 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 Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant 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 Consultant shall agree to be bound to Consultant and Authority in the same manner and to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant 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 Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. Consultant 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. Consultant may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original project for which Consultant 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. Consultant 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 Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant 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 Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. **RECORDS**

Consultant 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. Consultant 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 Consultant 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. Byron Pakter

(Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, 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 Consultant gives Authority notice of such court order or subpoena.

B. Consultant shall promptly notify Authority should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Authority and to provide Authority with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant written notice of a “litigation hold”, then as to all data identified in such notice, Consultant shall, at no additional cost to Authority, isolate and preserve all such data pending receipt of further direction from the Authority.

D. Consultant’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 Consultant’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 330
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:

Byron Pakter
Optony Inc.
5201 Great America Pkwy, Suite 320
Santa Clara, CA 95054

19. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be determined by the Authority but 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 Consultant 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 Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

In the event of Authority's termination of this Agreement due to no fault or failure of performance by Consultant, Authority shall pay Consultant for services satisfactorily performed up to the effective date of termination. Upon termination, Consultant 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 Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Authority. Consultant shall have no other claim against Authority by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

Consultant 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. Consultant shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100 *et seq.* Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant 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. Consultant 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**

Consultant 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 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 Consultant.

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 CONSULTANTS**

Authority reserves the right to employ other consultants 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 Consultant's proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant 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 Consultant's reasonable control and not due to any act by Consultant.

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by Consultant 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 Consultant for anything done, furnished or relating to Consultant'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 Consultant, 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 Consultant, 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

Enter Your Name, Enter Your Title

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME

Bryon Pakter

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

DRAFT

Exhibit A **Scope of Services**

Project Overview

The Fleet Electrification Technical Assistance Program (FETA) is designed to provide technical assistance to at least 5 member agencies fleets and 5 private fleets. By providing hands-on technical assistance through a consultant along with leveraging local and federal incentives, we aim to enable fleets to replace their current vehicles with suitable EV's.

The Fleet Electrification Program's technical assistance will provide public and private fleet managers with a range of tools as they prepare for an EV fleet transitions. The proposed full technical assistance package available to fleets is outlined below.

Objectives

1. Enable electrification for at least 10 SVCE customer fleets.
2. Prepare participating agencies to plan for and comply with upcoming state public fleet electrification targets.
3. Support non-participating agencies with fleet electrification best practices and case studies in support of upcoming state public fleet electrification targets.
4. Leverage available funding to the greatest extent practicable to minimize cost to the participating agencies while ensuring expedient project delivery.
5. Facilitate maximum operational cost savings to fleet managers and Silicon Valley Clean Energy renewable energy alignment objectives with charge management solutions.

Contractor Tasks

Administrative Tasks

1. Kickoff Meeting

Participate in a kickoff meeting with SVCE to review objectives, budget, timeline, administrative processes, and contract at a mutually determined time.

2. Monthly Progress Report and Call

Provide a short monthly progress report and associated call with the designated SVCE contract administrator. This report will outline project progress, challenges encountered, a description of additional funding or resources secured, and objectives for the following month.

3. Expense Report

Provide a monthly expense report at the beginning the month after the contract start date and

every month thereafter, or another schedule as mutually determined, submitted with the corresponding Monthly Progress Report, documenting expenses including labor (hours, rate, total), subcontractor expenses (with invoices), and equipment (with invoices). The expense report must include the total expenditures for the quarter and running expense total.

4. Annual Report

Provide an annual report that includes an executive summary, major accomplishments in the prior year, lessons learned and recommendations for future work, overview and assessment of fleet replacement plans and EV charging project plans delivered in the previous year, and financial summary comparing actual expenditures to the project budget. Draft reports will be submitted to Silicon Valley Clean Energy for review and approval before being finalized.

The annual report should also include key performance indicators, such as:

- a. Total fleets engaged, including a status summary
- b. Total fleets receiving support
- c. Expected number of EVs and charging infrastructure to be deployed, by fleet
- d. Reduction in total ownership costs to fleets
- e. Estimated fuel and emissions savings, per fleet

5. Final Report

Provide a final report for public distribution, subject to review and approval by Silicon Valley Clean Energy, this includes an executive summary, challenges encountered, and lessons learned, best practices for other public agency fleets, case studies suitable for sharing with other fleets, summary of total program impact and key performance indicators utilized in annual reports.

Project Tasks

1. Data collection

In coordination with Silicon Valley Clean Energy staff, Contractor collects fleet and other relevant data and assist in project planning.

This engagement will include the following:

- a. Organize and schedule meetings with public agency staff, in coordination with SVCE, develop agendas, circulate meeting minutes, etc.
- b. Facilitate a kickoff meeting with public agency staff and SVCE and follow up meetings, as relevant, to gather:
- c. Baseline information (e.g., fleet inventories, “as built,” current electrical infrastructure layout, panel schedules, and capacity, etc.)
- d. Existing or proposed near-term and long-term fleet transition policies
- e. Other information needed to scope specific projects
- f. Contractor will gather information on vehicle data, including vehicle characteristics and duty cycles and facility information (e.g., electrical capacity and other relevant details).

- g. Contractor will utilize templates for data collection that seek to minimize the level of effort needed on behalf of fleet managers.
- h. Contractor will share data obtained from public agencies with SVCE.

2. Develop Vehicle Replacement and Procurement Plans and Energy Needs Assessments

- a. Analysis of existing fleet vehicles and current duty cycles.
- b. Identification of 1 for 1 electric vehicle alternative options for each vehicle in the fleet, noting market availability and when replacements are not yet available or practical due to conditions such as range, hauling capacity, or other use cases (e.g., pursuit-rated police vehicles).

Contractor will note general availability of these vehicles on cooperative purchasing contracts (e.g., Sourcewell, Drive EV Fleets, California Department of General Services, etc.) to streamline future vehicle procurement.

- c. Vehicle replacement schedule that aligns with the fleet's typical replacement cycle, but also factors in state or local electrification timing requirements such as the California Air Resources Board Advanced Clean Fleet regulations. When practical, replacement schedules should start with "low-hanging fruit" options such as pool cars, light-duty vehicles, etc. as well as agency priority replacements, before moving to more difficult use cases over time.
- d. Estimated purchase price and an approximated total cost of ownership of each vehicle replacement in comparison to the internal-combustion engine equivalent over the service life of the vehicle.
- e. Recommended charging infrastructure types for each vehicle, which factors in estimated daily duty cycles (e.g., Level 2, high-power Level 2, DC fast charging of various power capacities, etc.) and vehicle charging needs. Recommendations for specific charging infrastructure models for the vehicle replacements identified, including piggybacking and cooperative contract procurement options (e.g., Sourcewell, Drive EV Fleets, etc.), if available, to streamline project timelines.
- f. Energy Needs Assessment for the electric fleet, which includes a calculation of each vehicle replacement's estimated annual electricity needs.

Vehicle replacement and procurement plans should note the following, when applicable:

- a. Consolidation opportunities to replace multiple underutilized vehicles with a fewer number of vehicles.
- b. "Right-sizing" opportunities to replace a vehicle with a smaller vehicle, if the duty cycle or use has changed.

Contractor shall make proprietary tools or software (e.g., Municipal Fleet Planning Tool)

available to fleet managers for the duration of the project.

Vehicle replacement and procurement plans will be reviewed by both the participating agency and SVCE and contractor will correct, edit, and amend the plans prior to being finalized.

3. Produce Charging Infrastructure Project Plans and Site Designs

- a. Facility assessment, including the determination of electrical infrastructure capacity to support recommended charging equipment, existing electrical service, potential connection points for EV charging infrastructure, identification of suitable locations for supporting electrical infrastructure (panels, transformers, etc.), ADA requirements as necessary, potential trenching and/or conduit run routes, identify other site-specific challenges or opportunities to the project.
- b. Electrical load analyses, as needed.
- c. Project cost estimate.
- d. Construction engineering site design documents that the agency can use in a public bid to hire contractors for installation services. These documents will include:
 - i. Basis of Design
 1. Project summary and description
 2. Engineering requirements and performance specifications
 3. Identification of ADA compliant EV stalls, if required
 4. Considerations for grading, if required
 5. Equipment specifications and cutsheets
 6. Other documents, as required by the public agency, to bid these charging station installation projects or receive permits
 - ii. Schematic Design Documents
 1. Architectural renderings (a.k.a. “as built”) of the parking areas and other facilities, as relevant
 2. Electrical single-line diagrams
 3. Trenching and/or conduit routes
 4. Panel schedules, if required
- e. Contractor shall arrange for a site walk with local agency contact to gather information to complete this task, as necessary.
- f. Charging infrastructure project plans will be reviewed by both the participating agency and SVCE and contractor will correct, edit, and amend the plans prior to being finalized.

4. Funding Package Overview

For each project, Contractor shall provide a detailed Funding Package Overview, which includes:

- a. Currently available funding options for both the vehicles and charging infrastructure from relevant state and local agencies, including:
 - i. The Clean Vehicle Rebate Project
 - ii. Hybrid and Zero-Emission Truck and Bus Boucher Incentive Project
 - iii. PG&E EV Fleets Program
 - iv. Bay Area Air Quality Management District
 - v. Others to be determined.
- b. The Overview will include any requirements unique to the funding agency such as vehicle utilization, access, vehicle types or use cases, etc.
- c. Contractors should seek to opportunities to stack funding, as relevant and allowable, to minimize costs to public agencies.
- d. Contractors shall also provide all information to the agencies to minimize effort needed by the fleet managers to apply for funding.
- e. The Funding Package Overview for each participating agency shall be reviewed and approved by SVCE before being finalized.

5. Charging Schedule and Optimization Plan

For each project, Contractor will provide a Charging Schedule and Optimization Plan, in the form of a brief memo, which includes:

- a. Simulated 15-minute charging load profiles based on vehicle behavior, duty cycles, and total energy needs, with and without charge optimization.
- b. Costs and other impacts of optimized and non-optimized charging.
- c. Recommended charging schedules based on maximum cost benefit to fleet, including time of use and demand charge optimization, and to the degree feasible, benefit to the grid.

SVCE will review and approve Charging Schedule and Optimization Plans before being finalized.

Contractor to provide training to public agency fleet manager on charge management basics, explanations of key concepts (demand charges, time of use rates, etc.), and benefits of charge management. Training can be incorporated into memo or delivered in another format with SVCE's approval.

Deliverables

Public Fleet electrification packages, which each include the following elements:

1. Report summarizing baseline data collection, fleet composition or asset lists, etc.

2. Spreadsheet-based model with vehicle replacement plan scenarios, including:
 - a. Total cost of ownership analysis
 - b. Replacement timeline
 - c. Identified vehicles as replacement options
3. Spreadsheet-based model with charging needs assessment, including number and types of charging stations required for an all-electric fleet
4. Memo summarizing project charging infrastructure plan for one site, including project overview, number of charging stations to be installed, determination of electrical capacity of the site to support recommended charging infrastructure, and futureproofing elements to be included
5. Basis of Design and Schematic Design construction documents for one project site per fleet
6. Memo summarizing relevant funding program opportunities and “to do” list of information needed to apply for relevant funding programs and important dates and deadlines
7. Charging optimization memo that includes charging cost scenarios for managed and unmanaged charging

Reporting

1. 3 Annual Reports
2. Monthly Progress reports (36)
3. 1 Final Report, including at least 1 case study that highlights an exemplary fleet electrification story
4. 2 Events or Webinars

Exhibit B
Schedule of Performance

This schedule may be modified with the written approval of the Authority.

Task	Begin (months after kick off)	Complete
1. Data Collection	1	
2. Vehicle Replacement & Procurement Plan and Energy Needs Assessment	3	
3. Funding package	3	
4. Charging schedule and optimization plan	4	
5. Charging Infrastructure Project Plan and Site Designs	5	
6.		
7.		
8.		
9.		
10.		

Exhibit C **Compensation**

Authority shall compensate Consultant 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 Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of THREE HUNDRED THOUSAND DOLLARS (\$300,000), 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.

Total SVCE Budget \$300,000

Task Number and Title	Small Fleet (0-199)	Medium Fleet (200-399)
Task 1 (Fleet Replacement Plan & Energy Needs Assessment)	\$10,000	\$14,000
Task 2 (Charging Infrastructure Plan)	\$8,000	\$10,000
Task 3 (Site Designs)	\$7,750	\$10,000
Optony Project Administration		\$47,000
Deliverables Budget	\$128,750	\$102,000
Total Deliverables	\$230,750	
Contingency (~5%)	\$15,000	
Remaining Budget for Custom Quotes (Large Fleets)	\$22,250	

Invoices

Monthly Invoicing: In order to request payment, Consultant 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). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

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. In no event shall reimbursable expenses collectively exceed the total sum of _____ (\$_____).

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority Representative prior to commencement of any additional services. Consultant shall submit, at the Authority Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

DRAFT

[Review insurance coverage and amounts to confirm they are appropriate for each scope of service]

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant 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 Consultant in the amount of at least \$1,000,000.
- (5) **Privacy and Cybersecurity Liability** **[May be reduced or eliminated based on scope of services]**

Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least \$5,000,000 US per occurrence.



Staff Report – Item 1e

Item 1e: Amending Program for SVCE Support of Electric Vehicle Charging in Affordable Housing Developments

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs & Policy;
Hannah Gustafson, Senior Community Programs Specialist

Date: 11/9/2022

RECOMMENDATION

Staff recommends the Silicon Valley Clean Energy (SVCE) Board of Directors approve the following amendments to the previously adopted action directing a new program for electric vehicle (EV) charging infrastructure incentives for affordable housing developments:

1. Expand the affordable housing eligibility criteria to provide broader support for charging at affordable housing, aligned with the adopted policy statement.
2. Allow for flexibility in incentive design based on stakeholder feedback.

BACKGROUND

On August 10, 2022, the SVCE Board of Directors approved a policy statement and action to authorize funding for SVCE support of electric vehicle charging in affordable housing developments (Item 1g): [SVCE Board of Directors Meeting, August 10, 2022](#). The core component of the policy statement was:

“Consistent with the SVCE Equity Framework, SVCE is committed to ensuring that residents in new affordable housing developments have equitable electric vehicle charging access.”

In support of that concept, the Board approved SVCE to spend up to \$7.5M to cover incremental EV charging infrastructure costs associated with the SVCE model code in new very low income and low income developments. These incentives were to be applicable to projects entitled from 2023-2025 under new reach codes to be adopted by SVCE member agencies.

As staff began to design this program, additional stakeholder feedback revealed that restricting eligibility to new affordable housing developments approved under the 2022-2025 reach code cycle would limit the potential reach of this program and miss an opportunity to support residents in other new affordable housing. In the spirit of the policy statement, staff proposes adjustments to the previously approved action.

AMENDMENT DETAILS AND DISCUSSION

- 1. Expand affordable housing eligibility criteria to provide broader support for charging at affordable housing, aligned with the adopted policy statement.**

As written, the program approved by the Board in August 2022 allocates funds for EV charging to new affordable housing developments built to 2022 reach code standards. Staff recommends adjusting eligibility to now include new affordable units that:

Agenda Item: 1e**Agenda Date: 11/9/2022**

- Are in a jurisdiction that has adopted 2022 EVI reach code that applies to multifamily buildings, **or**
- [NEW] Are in a jurisdiction that has adopted 2019 EV charging reach code that applies to multifamily buildings, **or**
- [NEW] Are built to meet SVCE's applicable model EV charging code standards, even if located in a jurisdiction without an EV charging reach code.

If none of the above three conditions are met, but the project is built to exceed the EV charging requirements in the State's Base CALGreen Code under which they are entitled, then eligibility for incentives would be at SVCE's discretion.

Reasoning

Increase fairness and participation. Broadening the scope allows more affordable developments to access these funds regardless of a jurisdiction's EV reach code status. Affordable housing in jurisdictions that do not have a reach code may now choose to exceed State code. Jurisdictions remain incentivized to adopt a 2022 EV charging reach code to ensure every future development takes advantage of SVCE's funds, but now incentives will be available even if they choose not to do so. This change will allow SVCE to help more new affordable housing residents get access to EV charging.

Accelerate program uptake. Affordable housing development construction is a multiyear process, and staff identified that there are affordable housing projects ongoing that this program may be able to influence if eligibility is expanded. Allowing new construction projects approved under the 2019 code cycle to be eligible will enable more affordable housing developments to install EV chargers quickly and at a greatly reduced cost. Opening funds to these housing developments meets the policy intent of the program, which is to provide support for the incremental costs of additional EVI installed above State code, reduces the likelihood of a jurisdiction granting a waiver that exempts developments from meeting the reach code, and provides greater EV charging access for residents of affordable housing.

Flexibility is necessary. Allowing flexible program eligibility is important considering the difficult development and financing environment for affordable housing. This program should allow flexibility in cases where costs to meet full SVCE model code would be cost-prohibitive (for example, if meeting the SVCE model code requirements would trigger an additional transformer installation or other similar high infrastructure cost not covered by this program) but the project is still exceeding the State's Base CALGreen Code.

2. Allow flexibility in incentive design based on stakeholder feedback.

As originally written, the program used an incremental cost estimate of \$1,000 per eligible unit of affordable housing. Staff recommends allowing for flexible incentive design based on ongoing stakeholder feedback. This includes updating the incentive structure to provide a set rebate amount per EV port or outlet, instead of per unit, to better align with similar EVI incentive programs. Depending on the equipment incentivized, the optimal rebate per port or outlet may end up being greater or less than \$1,000. Once the program incentive levels are finalized, and if incentive levels are adjusted in the future, staff will share an update via the CEO Report.

Reasoning

Aligns with similar incentive structures. Regulations on parking requirements are changing across the State, and this incentive should be based on the number of EV chargers installed rather than number of residential units to be consistent with other incentive programs and the code language.

Stakeholder feedback. Additional stakeholder input will help inform the best incentive structure to provide funding that meets the needs of the developments, is easy to access, and reflects fluctuating market costs.

STRATEGIC PLAN

The proposed changes to the program align with the board-adopted strategic plan for the following goals:

- Goal #11: Engage a full range of public, private and nonprofit stakeholders to leverage our decarbonization efforts
- Goal #12: Enact competitive service offerings and programs that deliver measurable environmental and economic benefits

ALTERNATIVE

The Board may choose to amend the proposed program requirements prior to adoption or take no action.

FISCAL IMPACT

No budgetary changes are anticipated with the approval of these amendments, as the overall funding level is not changing from \$7.5M as previously approved. The amendments may increase the number of projects that participate in the program and therefore utilize more of the \$7.5M budget. If so much affordable housing is constructed that the program approaches \$7.5M in incentives paid before the end of the 2022-2025 code cycle, then staff will return to the Board with an additional budget ask.



Staff Report – Item 1f

Item 1f: Approve Scholarship Funds for 2023 Empower SV Short-Film Competition

From: Girish Balachandran, CEO

Prepared by: Juliette Pascual, Community Outreach Fellow
Adam Selvin, Director of Energy Services and Community Relations

Date: 11/9/2022

RECOMMENDATION

Approve the allocation of \$20,000 from the marketing budget for scholarship prizes to be awarded to students in the proposed '2023 Empower SV Short-Film Competition'.

BACKGROUND

SVCE hosts a yearly scholarship competition to engage high school students in the agency's mission and to explore local solutions to climate change. For the first two scholarship competitions, SVCE hosted an electric bike building contest. To meet the challenges of the COVID-19 pandemic, SVCE shifted gears and hosted a short-film competition in recent years.

The short-film contest was created to meet the same goals of the annual scholarship competition, and the new format greatly expanded participation from students interested in a broader range of topics. For the inaugural film competition in 2021, SVCE received short films from 10 teams of students with varying subjects and formats. These submissions were judged by a panel of community members, including SVCE board members and industry experts. In 2022, the number of film submissions increased to 27, and the winning short films are highlighted on Empower SV webpage at SVCleanEnergy.org/empower-sv.

With the success of past short-film competitions, especially in engaging a diverse range of students and their interests, we propose to host another iteration of the contest. We hope to further increase the number of student participants by offering 2-3 prompts about clean energy and climate solutions.

ANALYSIS & DISCUSSION

In the proposed 2023 competition, high school students in the SVCE service territory, as individuals or teams, will submit a short-film (3-6 minutes) incorporating SVCE's mission to build a clean energy future by reducing greenhouse gas emissions and advancing climate solutions. This competition will not only introduce students to concepts such as clean energy technologies and real-world climate solutions, but it will allow SVCE to uplift our communities' strengths, interests, and concerns in clean energy and climate change.

The proposed Empower SV Short-Film Competition would be administered from February 2023 to May 2023. The competition would begin with a virtual kick-off event, in which staff will introduce participants to the community's climate goals and core themes of clean energy. After students work on and submit their short films, a panel of judges will select the main prize and honorable mention winners. All submissions and winners would be showcased on the SVCE website and promoted in conjunction with a virtual (or hybrid, COVID-19 concerns allowing) 'film festival' event to be held at the conclusion of the competition.

Agenda Item: 1f**Agenda Date: 11/9/2022**

Staff recommends an allocation of \$20,000 for scholarships under this program. Rather than ranking top winners, designating four categories of equal scholarship amounts of \$3,000 each would reward different contributions and skillsets encouraged by the competition. Adding four honorable mention prizes of \$2,000 each will increase the number and diversity of solutions awarded. Staff anticipates that these scholarship prizes will be successful in incentivizing student participation and acknowledging the time and creative effort spent on developing the short films. Main prizes will include the following:

- The Energy Impact Award, one \$3,000 prize, will honor the film that describes a solution likely to have a high impact in clean energy adoption at the local community level. An emphasis will be placed on solutions that are both implementable and replicable.
- The Energy Innovation Award, one \$3,000 prize, will recognize a creative and unique approach to clean energy. This award recognizes innovative solutions that deal with clean energy, including those that may go beyond the purely technological. Such solutions may consider social effects, like policy or human wellbeing, or other effects of clean energy in addition to the underlying science.
- The Creative Presentation Award, one \$3,000 prize, rewards creative storytelling and communication of a clean energy solution. This award encourages creative artistic expression and a diversity of approaches to film production, such as a music video or animated film.
- The Community Enthusiasm Award, one \$3,000 prize, will denote achievement in showcasing widespread and meaningful participation from the community. This award will incentivize solutions that receive broad support or implementation, such as school- or neighborhood-wide projects.

The Honorable Mention Awards, four at \$2,000 each, would recognize short-films that did not win any of the main prize categories, but nevertheless demonstrated strong clean energy solutions and/or creative communications.

The event and scholarship awards are a great opportunity to communicate SVCE's dedication to reinvesting in the community, encourage Silicon Valley's youth to reflect creatively on clean energy and climate change, and reach residential customers.

STRATEGIC PLAN

This event aligns with customer and community goals in SVCE's board-adopted Strategic Plan, specifically with Goal 10 – Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices. The competition will build grassroots awareness and knowledge about clean energy's role in decarbonization and community development.

ALTERNATIVE

Approve a general allocation of \$20,000 for a 2023 scholarship program. If the Empower SV Short-Film Competition is not approved by the SVCE Board as a scholarship program for 2023, staff will explore other prize options, modify award categories, or explore alternative student scholarship competition ideas.

FISCAL IMPACT

No incremental fiscal impact. The \$20,000 in scholarship funds will be allocated from the board-approved Account Services & Community Relations marketing budget.



Staff Report – Item 1g

Item 1g: Adopt Resolution Approving SVCE Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/9/2022

RECOMMENDATION

Staff recommends the SVCE Board of Directors adopt Resolution 2022-28 adopting GAP08 – Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1.

BACKGROUND

SVCE is a government agency subject to the Political Reform Act (Cal. Gov. Code §§ 81000 *et. seq.*), including reporting requirements for gifts and income received by the Board of Directors, officials, and employees. The Fair Political Practices Commission (FPPC) promulgates regulations pertaining to the receipt of gifts, which exempt tickets and passes to events provided those tickets and passes are distributed in accordance with a written policy adopted by the agency. In order to establish a best practice for a fair and equitable process for the distribution of complimentary tickets or passes acquired by SVCE, SVCE's general counsel has drafted the proposed policy which would apply to SVCE officials, employees, and consultants who are required to file a Statement of Economic Interests (Form 700). Without such a policy in place, SVCE officials, employees, and consultants must report the value of tickets and passes received as gifts or as income on their Form 700s.

ANALYSIS & DISCUSSION

Pursuant to California FPPC regulation section 18944.1, tickets and passes are not considered gifts under the Political Reform Act when the following criteria are satisfied: (i) the ticket or pass is distributed and used consistent with a written policy adopted by the agency's governing body; (ii) the distribution of the ticket or pass is reported on FPPC Form 802; (iii) the ticket or pass is not earmarked by an outside source for use by a specific agency official; and (iv) the ticket or pass is distributed in the sole discretion of the agency. The proposed policy is consistent with the requirements of section 18944.1 and, if approved, would exempt tickets and passes distributed under the policy from the gift and income reporting requirements under the Political Reform Act.

SVCE staff will post and disclose ticket distribution using FPPC Form 802 as outlined in Section 9 Posting and Disclosure Requirements of the proposed policy.

STRATEGIC PLAN

N/A

FISCAL IMPACT

No fiscal impact to the agency as a result of adopting the proposed policy.

ATTACHMENTS

1. Resolution 2022-28 Adopting GAP08 - Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2022-28

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY ADOPTING A COMPLIMENTARY TICKET OR PASS DISTRIBUTION POLICY PURSUANT TO FPPC REGULATION 18944.1

THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

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

WHEREAS, SVCE obtains or receives tickets and passes that are distributed on a complimentary basis to SVCE officials, employees, and consultants who are required to file a Statement of Economic interests pursuant to the Political Reform Act or the SVCE Conflict of Interest Code.

WHEREAS, pursuant to California Fair Political Practices Commission (FPPC) regulation section 18944.1, these tickets and passes are not considered gifts under the Political Reform Act when the following criteria are satisfied: (i) the ticket or pass is distributed and used consistent with a written policy adopted by the agency's governing body; (ii) the distribution of the ticket or pass is reported on FPPC Form 802; (iii) the ticket or pass is not earmarked by an outside source for use by a specific agency official; and (iv) the ticket or pass is distributed in the sole discretion of the agency.

WHEREAS, SVCE desires to adopt a complimentary ticket and pass distribution policy in accordance with the Political Reform Act and the FPPC regulations.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The Board hereby adopts the Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1, attached hereto as Exhibit A.

Section 2. The Board directs SVCE staff to post the policy on SVCE's website within 30 days of adoption and email a link to the policy to the FPPC.

ADOPTED AND APPROVED this 9th day of November 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Clerk



GAP8

Category: GENERAL & ADMINISTRATIVE

COMPLIMENTARY TICKET OR PASS DISTRIBUTION POLICY PURSUANT TO FPPC REGULATION 18944.1

Section 1. Purpose of Policy

The purpose of this Policy is to establish a fair and equitable process for the distribution of complimentary tickets or passes to Silicon Valley Clean Energy ("SVCE") officials, employees, and their guests in compliance with the requirements of Section 18944.1 of the Fair Political Practices Commission (FPPC) Regulations. This Policy is subject to all applicable FPPC Regulations and the Political Reform Act, as now exist or may hereafter be added or amended.

Section 2. Definitions

Unless otherwise expressly provided herein, words and terms used in this Policy shall have the same meaning as that ascribed to such words and terms in the FPPC Regulations and the Political Reform Act.

- A. "SVCE" shall mean the Silicon Valley Clean Energy Authority, and any departments, boards, committees, and commissions thereof.
- B. "SVCE Official" shall mean every official, officer, agent and employee of SVCE who is obligated to file an annual Statement of Economic Interests (FPPC Form 700) under the Political Reform Act or SVCE's current conflict of interest code.
- C. "SVCE Venue" shall mean and refer to any facility owned, controlled or operated by SVCE.
- D. "FPPC" shall mean and refer to the California Fair Political Practices Commission.
- E. "FPPC Regulations" shall mean the Fair Political Practices Commission regulations contained in Title 2, Division 6 of the California Code of Regulations, Sections 18110 et seq., as the same may be amended from time to time.
- F. "Immediate Family" shall mean the spouse and dependent children of the SVCE Official. The term spouse includes registered domestic partners recognized by state law. The term dependent children shall mean a child, including an adoptive child or stepchild, of a SVCE Official who is under 18 years old and who the SVCE Official is entitled to claim as a dependent on his or her federal tax return.
- G. "Pass" shall mean a Ticket that provides repeated access, entry, or admission to a facility or series of events and for which similar passes are sold to the public.
- H. "Policy" shall mean and refer to this Complimentary Ticket or Pass Distribution Policy Pursuant to FPPC Regulation 18944.1



GAP8

Category: GENERAL & ADMINISTRATIVE

- I. "Political Reform Act" shall mean California Political Reform Act of 1974 (Government Code Sections 81000, et seq., as the same may be amended from time to time) and the FPPC Regulations.
- J. "Ticket" shall mean anything that provides access, entry, or admission to a specific future event or function, and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits that the ticket provides.

Section 3. Application of Policy

- A. This Policy shall be applicable to every officer, agent and employee of SVCE who is obligated to file an annual Statement of Economic Interests (Form 700) under the Political Reform Act or SVCE's current conflict of interest code.
- B. This Policy governs the distribution of Tickets or Passes by SVCE to a SVCE Official, or at the behest of a SVCE Official, that are either:
 - 1. Gratuitously provided to SVCE by an outside source;
 - 2. Acquired by SVCE by purchase;
 - 3. Acquired by SVCE as consideration pursuant to the terms of a contract for the use of a SVCE Venue; or
 - 4. Acquired and distributed by SVCE in any other manner.
- C. This Policy does not apply to the following:
 - 1. *Other items of value.* Any other item of value provided to SVCE or any SVCE Official such as food, beverages, or other items, regardless of whether received gratuitously or for which consideration is provided.
 - 2. *Sources other than SVCE.* Tickets or Passes provided by sources other than SVCE.
 - 3. *Taxable Income.* A Ticket or Pass received by a SVCE Official from SVCE where both the SVCE Official and SVCE treat and report the value of the Ticket or Pass as taxable income consistent with applicable state and federal income tax laws and the Ticket is reported as income.
 - 4. *Reimbursement.* A Ticket or Pass distributed by SVCE to a SVCE Official if such SVCE Official pays to SVCE the fair value of the ticket within 30 days of receipt.
 - 5. *Ceremonial Roles.* A Ticket provided to a SVCE Official so that the SVCE Official may perform a ceremonial role on behalf of SVCE or as part of his or her job duties



GAP8

Category: GENERAL & ADMINISTRATIVE

to assist the official performing the ceremonial role, is not a gift as provided by Section 18942(a)(13) of the FPPC Regulations.

Section 4. General Provisions.

- A. No Right to Tickets or Passes: The use of complimentary Tickets or Passes is a privilege extended by SVCE and not the right of any person to which the privilege may from time to time be extended.
- B. Limitation on Transfer of Tickets or Passes: Tickets or Passes distributed to a SVCE Official pursuant to this Policy shall not be transferred to any other person, except to members of such SVCE Official's Immediate Family or no more than one guest solely for their attendance at the event. If a SVCE Official transfers a Ticket or Pass he or she has received from SVCE to another person, as opposed to returning the Ticket or Pass to SVCE for redistribution, then the value of the Ticket or Pass he or she transfers shall constitute a gift to him or her and shall be reportable as provided by the FPPC Regulations.
- C. Prohibition Against Sale of or Receiving Reimbursement for Tickets or Passes: No person who receives a Ticket or Pass pursuant to this Policy shall sell or receive reimbursement for the value of such Ticket or Pass.
- D. No Disproportionate Use. There shall be no disproportionate use of Tickets or Passes by any SVCE Board member, Chief Executive Officer ("CEO"), political appointee or any department head.

Section 5. Ticket Administrator

- A. The SVCE Board delegates the authority to the CEO or their designee to be the Ticket Administrator for purposes of implementing the provisions of this Policy.
- B. The Ticket Administrator shall have the authority, in their sole discretion, to establish procedures for the distribution of Tickets or Passes in accordance with this Policy. All requests for Tickets or Passes that fall within the scope of this Policy shall be made in accordance with the procedures established by the Ticket Administrator.
- C. The Ticket Administrator shall determine the fair value of Tickets or Passes distributed by SVCE for purposes of reporting pursuant to Section 9 of this Policy.
- D. The Ticket Administrator, in their sole discretion, may revoke or suspend the Ticket privileges of any person who violates any provision of this Policy or the procedures established by the Ticket Administrator for the distribution of Tickets or Passes.
- E. For the purpose of implementing this Policy, and completing and posting the FPPC California Form 802, the Ticket Administrator shall be the "Agency Head." The SVCE Secretary is delegated responsibility for completing and posting the FPPC Form 802.



GAP8

Category: GENERAL & ADMINISTRATIVE

Section 6. Conditions Under Which Tickets or Passes Distributed to SVCE Officials are not considered a Gift under the Political Reform Act

- A. The Ticket Administrator must distribute complimentary Tickets or Passes to SVCE Officials only pursuant to this Policy.
- B. The Ticket or Pass is not earmarked by an outside source for use by specific SVCE Official(s). The Ticket Administrator must determine, in its sole discretion, who uses the Ticket or Pass.
- C. The Ticket or Pass must be reported pursuant to Section 9 of this Policy.
- D. The distribution of the Ticket(s) to, or at the behest of, the SVCE Official must accomplish or further one or more of the following governmental and/or public purposes:
 - 1. Facilitating the performance of a ceremonial role or function by a SVCE Official on behalf of SVCE at an event, for which the SVCE Official may receive enough Tickets or Passes for the SVCE Official and each member of his or her Immediate Family.
 - 2. Facilitating the attendance of a SVCE Official at an event where the job duties of the SVCE Official require his or her attendance at the event, for which the SVCE Official may receive enough Tickets or Passes for each member of the SVCE Official's Immediate Family.
 - 3. Promotion of intergovernmental relations and/or cooperation and coordination of resources with other governmental agencies, including, but not limited to, attendance at an event with or by elected or appointed public officials from other jurisdictions, their staff members and their guests.
 - 4. Meeting and greeting individuals in SVCE's service area to gain feedback on and make observations of the quality and awareness of SVCE services or to gain insight into what SVCE services that individuals would like to see SVCE make available;
 - 5. Economic or business development purposes on behalf of SVCE.
 - 6. Promotion of SVCE resources and/or facilities available to SVCE customers.
 - 7. Promotion of SVCE-run, sponsored or supported community events, activities, or programs.
 - 8. To monitor and evaluate the value of SVCE-run, sponsored, or supported community events, activities or programs, including, but not limited to, evaluation of the venue, quality of performances and compliance with SVCE policies, agreements and other requirements.



GAP8

Category: GENERAL & ADMINISTRATIVE

9. Promotion and evaluation of events, activities or programs at SVCE venues, including but not limited to evaluation of the venue, quality of performances and compliance with SVCE policies, agreements and other requirements.
 10. Promoting, supporting and/or showing appreciation for programs or services rendered by charitable and non-profit organizations benefiting SVCE customers.
 11. Promotion of SVCE brand recognition, visibility, and/or profile on a local, state, national or worldwide scale.
 12. Encouraging SVCE customer support for and attendance at local events.
 13. Encouraging participants in SVCE sponsored programs to attend local events.
 14. Attracting or rewarding volunteer public service.
 15. Encouraging or rewarding significant achievements of SVCE customers.
 16. Attracting and retaining highly qualified employees to SVCE.
 17. Recognizing or rewarding meritorious service by a SVCE employee.
 18. Promoting enhanced SVCE employee performance or morale.
 19. Furthering any other public purpose that SVCE is required or authorized by law to pursue, any public purpose similar to those listed herein, any public purpose identified in any SVCE contract or as may be determined by resolution of the Board of Directors.
 20. As an incident to the above public purposes, allowing for the Immediate Family of the SVCE Official to accompany the SVCE Official to events to accomplish any of the purposes listed in this Resolution.
- E. The SVCE Official receiving a Ticket or Pass shall prepare a written inspection report of findings and recommendations if part of the public purpose for which the Ticket or Pass was received was for the public oversight or inspection of facilities.

Section 7. Tickets or Passes Distributed at the Behest of a SVCE Official.

- A. Only the following SVCE Officials shall have authority to behest Tickets or Passes:
SVCE Board Members and the CEO.
- B. Tickets or Passes shall be distributed at the behest of a SVCE Official only for one or more public purposes set forth in Section 6.D. above.



GAP8

Category: GENERAL & ADMINISTRATIVE

- C. If Tickets or Passes are distributed at the behest of a SVCE Official, such SVCE Official shall not use one of the Tickets or Passes so distributed to attend the event.

Section 8. Other Benefits

- A. The distribution of Tickets or Passes pursuant to this Policy shall not constitute a "gift" to the SVCE Official receiving the Ticket, however, other benefits, such as food or beverage or other gifts provided to the SVCE Official that are not given to the general public as part of the Ticket or Pass admission, will need to be accounted for as gifts.
- B. If SVCE receives complimentary Tickets or Passes that are earmarked for particular SVCE Officials, then the Tickets or Passes are considered gifts to that particular SVCE Official. If these Tickets or Passes are not returned unused to the provider within thirty (30) days of receipt, then the SVCE Official must comply with the applicable FPPC gift limit regulations and reporting regulations.

Section 9. Posting and Disclosure Requirements

- A. Within 30 days of adoption or amendment of this Policy, the Policy shall be posted on SVCE's website and a link to the website that displays SVCE's Policy shall be e-mailed to the FPPC in order for the FPPC to post the link on its website.
- B. Within 45 days of distribution of a Ticket or Pass, SVCE must report the distribution on FPPC Form 802 containing the information required to be reported under Regulation 18944.1(d), and post the Form 802 on SVCE's website and a link to the website that displays SVCE's Form 802s shall be e-mailed to the FPPC in order for the FPPC to post the link on its website.
- C. This Policy and SVCE's Form 802s are public records and are subject to inspection and copying under Government Code Section 81008.



Staff Report – Item 1h

Item 1h: Adopt Resolution Authorizing the Chief Executive Officer to Negotiate and Execute Contracts up to \$300,000 for Recruiting Purposes for 180 Days

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
 Kevin Armstrong, Deputy Director of Administrative Services

Date: 11/9/2022

RECOMMENDATION

Staff recommends the Board of Directors adopt Resolution 2022-29 authorizing an increase in the Chief Executive Officer's authority to negotiate and execute contracts for 180 days to respond to the staffing vacancies that SVCE is currently experiencing.

BACKGROUND

SVCE has a number of new and vacant positions that staff believes would benefit from the extra attention and active effort outside recruiters would provide over standard recruitment processes. In this most recent FY22-23 budget, SVCE requested, and the Board approved, ten new positions, and staff believes filling many of these quickly is important to the organization's success. The Board previously granted similar authority during mid-2021, when SVCE was faced with significant staff turnover.

ANALYSIS & DISCUSSION

To maintain service levels and expand program offerings, SVCE needs to fill numerous positions quickly. Given the continuing tight labor market, it is taking significant time to fill vacant positions, and staff believes that engaging with one or more recruiting firms to provide intensive, high-touch capacity to find and evaluate candidates represents the most effective path forward to meeting these needs.

SVCE has initiated conversations with various recruiters to address the vacancy situation, and management believes that negotiating and executing one or more recruiting contracts will provide the necessary support to fill positions quickly.

Industry-standard costs for technical recruiting of roles like those on our teams are 25 - 33% of first-year compensation, so staff is conservatively estimating \$60k each based on traditional recruitment costs, and is aiming to fill up to nine positions under this authority, across multiple recruiters. Notably, staff has negotiated with one recruiting firm to potentially offer a discounted fee structure, based on months engaged, rather than initial salaries, which staff believes will provide some headroom in the authorization request and incentive for hiring managers to work actively with recruiters to fill positions. Included in these recruiting contracts are positions spanning the organization, with roles on the 4PRO, Decarbonization Programs & Policy, Energy Services and Community Relations, and Finance & Administration teams.

Staff is requesting increases to this authority for a 180-day period to address these needs, but as the situation is fluid, further recommendations may be forthcoming to the Board.

Agenda Item: 1h**Agenda Date: 11/9/2022**

STRATEGIC PLAN

The recommendation supports the "Build and Maintain a high performing team" goal of the strategic plan.

ALTERNATIVE

Staff is open to suggestions from the Board.

FISCAL IMPACT

This recommendation will have a minimal fiscal impact to the agency, as funds are available in the FY22-23 budget from both allocations for professional services and vacancy savings from the personnel budget.

ATTACHMENT

1. Resolution 2022-29 Authorizing the Chief Executive Officer to Negotiate and Execute Contracts up to \$300,000 for 180 days for staffing purposes.

**SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2022-29**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON
VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE CHIEF
EXECUTIVE OFFICER FOR ONE HUNDRED EIGHTY (180) DAYS
TO NEGOTIATE AND EXECUTE CONTRACTS UP TO \$300,000 FOR
RECRUITING PURPOSES**

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, to provide such services, Silicon Valley Clean Energy seeks to fill multiple vacant full-time staff positions; and

WHEREAS, Silicon Valley Clean Energy desires additional support to aid staff in filling existing vacancies and newly-created positions amidst a challenging labor market by entering into agreements with firms for the purposes of recruiting new staff; and

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority hereby resolves:

In response to the impact on the Authority and its services due to the current number of vacant positions and the challenging labor market, the Board hereby authorizes the Chief Executive Officer for the next one hundred eighty (180) days to negotiate and execute contracts up to \$300,000 with firms for the purposes of recruiting and filling critical staffing vacancies.

PASSED AND ADOPTED this 9th day of November, 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				

City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Larsson				

Chair

ATTEST:

Andrea Pizano, Board Secretary

**Staff Report – Item 1i**

Item 1i: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/9/2022

No report as the Executive Committee has not met since August 26, 2022.

The next meeting of the Executive Committee is scheduled for November 14, 2022 at 1:00 p.m.; materials will be posted no later than 72 hours in advance of the meeting.

**Staff Report – Item 1j**

Item 1j: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/9/2022

No report as the Finance and Administration Committee has not met since October 5, 2022.

The next meeting of the Finance and Administration Committee is to be determined; materials will be posted no later than 72 hours prior to the meeting date.

**Staff Report – Item 1k**

Item 1k: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/9/2022

No report as the Audit Committee has not met since September 30, 2022.

The next meeting of the Audit Committee will be scheduled based on member availability but will likely take place in January and/or February 2023; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 11

Item 11: Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/9/2022

No report as the Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee has not met since June 14, 2022.

The next meeting of the Committee will be held in November 2022.

**Staff Report – Item 1m**

Item 1m: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 11/9/2022

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 a regular board meeting on Wednesday, October 19, 2022.

Attached is a summary report from Interim General Manager Timothy Haines; materials from the October board meeting can be found here on the CC Power website: [CC Power Meeting, 10/19/22](#)

The next meeting of the board will be November 16, 2022 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

ATTACHMENTS:

CA Community Power Board Meeting Summary from Interim General Manager Timothy Haines, October 19, 2022

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 10/21/2022

FROM: Tim Haines – Interim General Manager

SUBJECT: **Report on CC Power Regular Board of Directors Meeting – October 19, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, October 19, 2022, 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>

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
 - Minutes of the Regular Board Meeting held on September 21, 2022.
 - Resolution 22-10-01 Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency
 - Resolution 22-10-02 Acceptance of CC Power 2021 Audited Financials
- **Update from Strategic Business Plan ad hoc Committee**
 - Presentation from Independent System Operator CEO Elliot Mainzer. Chair Syphers welcomed Mr. Mainzer and introduced the Board Members. The Chair described the purpose of CC Power, the contracts that it has entered and the intent to engage with CAISO on transmission and market issues related to its projects. He also explained that CAISO should continue to look to CalCCA for matters that are of interest to the broader CCA community. The CAISO President and CEO focused his comments on reforms to Resource Adequacy, transmission planning and efforts to streamline the interconnection queue and responded to Board Member comments and questions. He and Chair Syphers expressed interest in continued discussions.
 - Update from Strategic Business Plan ad hoc Committee. The update to the Strategic Business Plan was provided by Committee lead Sears and CC Power consultant Phyllis Currie. Mr. Sears provided an overview of the process and schedule. Ms. Currie reviewed continuing feedback that she has received from Board members, the key priorities that have been identified to date, provided a list of future programs and services that CC Power will consider and her thoughts on the ordering of priorities in the three-year plan. The Board provided feedback on the preliminary findings and confirmed that the ad hoc Committee should continue as planned. The board took no action.

A Joint Powers Agency whose members are:

Central Coast Community Energy | CleanPowerSF | East Bay Community Energy | MCE | Peninsula Clean Energy |
Redwood Coast Energy Authority | San José Clean Energy | Silicon Valley Clean Energy | Sonoma Clean Power |
Valley Clean Energy

- Resolution 22-10-03 Approval of the 2023 Budget and Cash Call and Update the Fiscal Year. Interim General Manager presented the proposed CC Power budget for the first six months of 2023. The \$555,102 budget includes funding for a full-time GM and a staff person. The Board discussed the budget and provided direction to the Interim GM. The Board adopted the budget unanimously.
- Resolution 22-10-04 Approval of General Manager Authority to Extend and Execute Consulting Contracts in Accordance with CC Power Budgets. The General Counsel presented the Board resolution. The Board directed the Interim General Manager to keep it informed on the contract extension. The Board approved the resolution unanimously.
- General Manager Search Update/Next Steps. The General Manager informed the Board that Members Chaset, Mitchell and he will be on the GM search committee. The GM Search ad hoc Committee will report back to the Board on its initial thoughts at the November Board meeting.

Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 11/9/2022

REPORT**SVCE Staff Update**

Citlalli Sandoval joined the SVCE team on October 31, 2022 as our new Senior Regulatory Advisor. She will be assisting SVCE on regulatory issues at the CPUC and CEC. She joins us from CleanPowerSF where she covered both Regulatory and Legislative Affairs; prior to her time at CleanPowerSF she worked at the CPUC.

Personnel Officer Update

SVCE has confirmed an offer to a Decarbonization Data Engineer, who will be joining SVCE at the beginning of December. In addition, SVCE continues to recruit for open positions across all teams, in order to fill both vacancies, and a number of the new positions approved by the Board in the FY22-23 budget. Staff benefit enhancements have begun to roll out, with increased premium contributions, in-lieu payments, and paid parental leave underway, and additional enhancements in development for deployment soon.

CEO Agreements Executed

The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

- 1) Aaron Reed &N Associates, Agreement: Lobbyist Services, not to exceed \$96,000, 12/1/22 – 11/30/23
- 2) Buro Happold, Agreement: City of Mountain View Resilience Support, not to exceed \$22,250
- 3) Adapt2, Agreement: Software as a service, not to exceed \$3,296,405, 10/5/22 – 10/4/23
- 4) Buro Happold, Agreement: City of Los Altos Grants Research Proposal, not to exceed \$24,920
- 5) Buro Happold, Amendment: extension of date to 6/30/23
- 6) SMUD, Amendment: GHG Models and Methods Scoping Support, not to exceed \$128,793

CEO Power Supply Agreements Executed

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
Calpine	9/26/2022	Purchase	Resource Adequacy	8/1/2023	10/31/2023	\$3,600,000
Calpine	9/26/2022	Purchase	Resource Adequacy	3/1/2023	3/31/2023	\$68,000
Calpine	9/26/2022	Sale	Resource Adequacy	3/1/2023	3/31/2023	\$85,000
Calpine	9/26/2022	Sale	Resource Adequacy	3/1/2023	4/30/2023	\$515,000
Bald Mesa Solar, LLC	9/26/2022	Purchase	Resource Adequacy	8/1/2023	7/31/2033	\$74,070,000
PG&E	10/25/2022	Purchase	Resource Adequacy	1/1/2023	11/30/2023	\$1,404,310

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;
- CC Power Board Meeting, October 19, 2022, report included on the Consent Calendar
- Participated in California Community Choice Financing Authority Board of Directors Special Meeting, October 21, 2022 (Zak Liske, Sr. Manager of Power Operations)

Presentations from SVCE Staff

- 10/27, Monica Padilla, COO and Director of Power Resources: VERGE Conference panelist, *Accelerating the Future of Energy Through Innovation, Together*

ATTACHMENTS

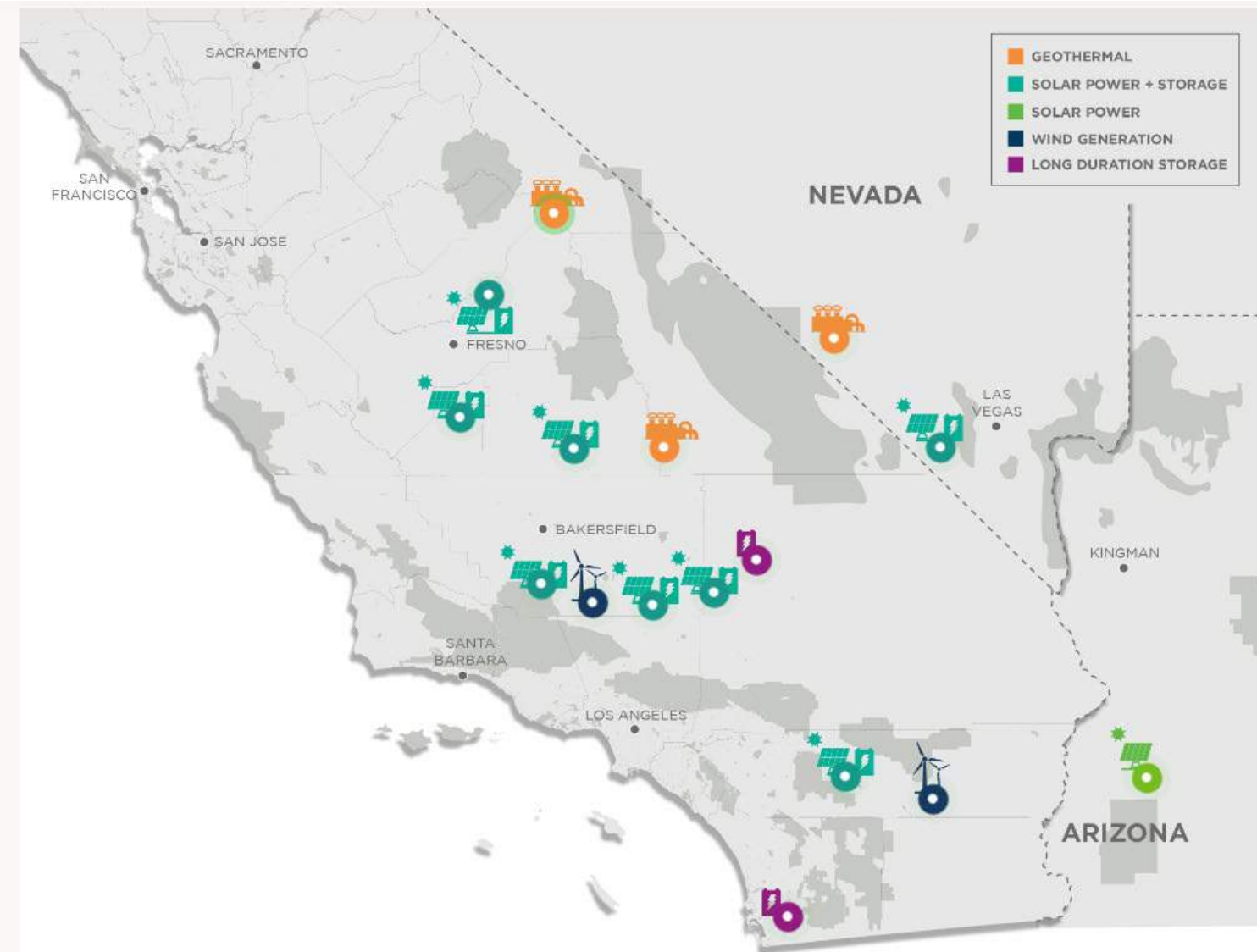
1. Clean Power Update, November 2022
2. Decarb Programs & Policy Update, November 2022
3. Energy Services & Community Relations Update, November 2022
4. Legislative and Regulatory Update, November 2022
5. Agenda Look Ahead, November 2022 – March 2023

CEO Report Clean Power Update

SVCE Board Meeting
November 9, 2022



Clean Long-term Power Agreements



- \$1.9B+ in commitments
- 16 PPAs signed
 - 13 new build projects
- 676 MW of Renewable Power
- 151 MW lithium-ion storage paired with 445 MW of Solar PV
- 29 MW of Long-duration storage

5 Projects now delivering to SVCE meeting ~23% energy needs:

- COSO geothermal- January 2022
- Slate Solar + Storage- January 2022
- Casa Diablo geothermal- September 2022
- Mountain View wind – July 2022
- Rabbitbrush Solar + Storage- October 2022



SVCE Long-Term Clean Energy Contracts

Item 2
Attachment 1

	Seller	Project Name	Technology	Generation MW	Storage MW	Approximate % of Annual load in 2025	Term (years)	Lifetime Not to Exceed Authority (MM\$)	SVCE Board Approval	Status
1	MN8	Slate	Solar + Storage	93.0	46.5	6.7%	17	\$198	Oct-18	Online
2	Ormat	Casa Diablo	Geothermal	7.0		1.4%	10	\$43	Feb-20	Online
3	Atlantica	Coso	Geothermal	43.8		9.6%	15	\$331	Mar-20	Online
4	Leeward	Rabbitbrush	Solar + Storage	40.0	8	3.0%	15	\$64	Apr-20	Online
5	NextEra	Yellow Pine	Solar + Storage	50.0	26	4.1%	20	\$128	May-20	Construction
6	Avantus	Aratina	Solar + Storage	80.0	20	6.6%	20	\$174	Jun-20	Pre-construction
7	174 Power Global	Atlas	Solar	50.0	0	3.8%	10	\$27	Jan-21	Pre-construction
8	SB Energy	Angela	Solar + Storage	20.0	10	1.4%	15	\$35	Mar-21	Pre-construction
9	AES	Mountain View	Wind	62.5	15.625	3%	20	\$128	Apr-21	Online
10	Origis	San Luis West	Solar + Storage	33.5		4%	15	\$74	Apr-21	Pre-construction
11	Clearway	Victory Pass	Solar + Storage	100.0	25	8%	15	\$149	May-21	Pre-construction
12	Terra-Gen	Cameron Crest	Wind	77.7		5%	15	\$150	May-21	Existing
13	Rev Renewables	Tumbleweed	Long Duration Storage		14.6	n/a	15	\$100	Feb-22	Pre-construction
14	Onward	Goal Line	Long Duration Storage		14.2	n/a	15	\$100	Mar-22	Pre-construction
15	Ormat	Geothermal Portfolio	Geothermal	16.75		3.3%	20	\$256	Jun-22	Pre-construction
16	OME	Fish Lake	Geothermal	1.82		0.4%	20	\$30	Jun-22	In-development



Clean Energy Resources On-line Progress

2022 – Q4

- Rabbitbrush Solar + Storage – *Achieved COD on 10/18/2022*
- Atlas Solar – *Pre-Construction - delayed*

2023 – Q1

- Cameron Crest Wind – *Existing project*

2023 – Q2, Q3

- Yellow Pine Solar + Storage – *Construction mode - delayed*
- Angela Solar + Storage – *Pre-construction - delayed*
- Aratina Solar + Storage – *Pre-construction - delayed*

2023 – Q3, Q4

- Victory Pass Solar + Storage – *Pre-construction - delayed*
- San Luis West Solar + Storage – *Pre-construction - delayed*

2024+

- FCR: Ormat and Fish Lake – *Pre-construction*
- LDS: Goal Line and Tumbleweed – *Pre-construction*



Project Construction Updates

Item 2
Attachment 1

**Rabbitbrush Solar +
Storage 40 MW**

COD October 18, 2022

**2nd Solar + Storage
Project in SVCE's
portfolio to achieve
COD**

**Ribbon cutting
scheduled for late
November.**





Project Construction Updates

Item 2
Attachment 1

**Yellow Pine Solar
+ Storage 50 MW
COD June 2023**



THANK YOU!



DECARBONIZATION PROGRAMS UPDATE

OCTOBER HIGHLIGHTS



Gas Data Now Available in SVCE Data Hive

The SVCE Data Hive recently launched gas services. Users can now request authorized access to historical usage and billing data for both electricity and natural gas. Existing Data Hive authorizations will not change in scope; third parties will need to send their customer a new authorization request in order to access their gas data.



New FutureFit Homes Program Launches

SVCE now offers up to \$8,000 in rebates to help single-family residents to electrify their homes. Launched on October 21, the FutureFit Homes program provides rebates for heat pump water heaters and heat pump space heating and cooling. Additional incentives are available to upgrade electric panels, pre-wire circuits for future electrification, and even remove the gas meter. This suite of rebates aims to support whole-home electrification, and, in the future, the program will offer more resources to help customers leverage forthcoming state and federal incentives. Program details can be found on the [FutureFit Homes rebate page](#).



CALeVIP Funds EV Infrastructure

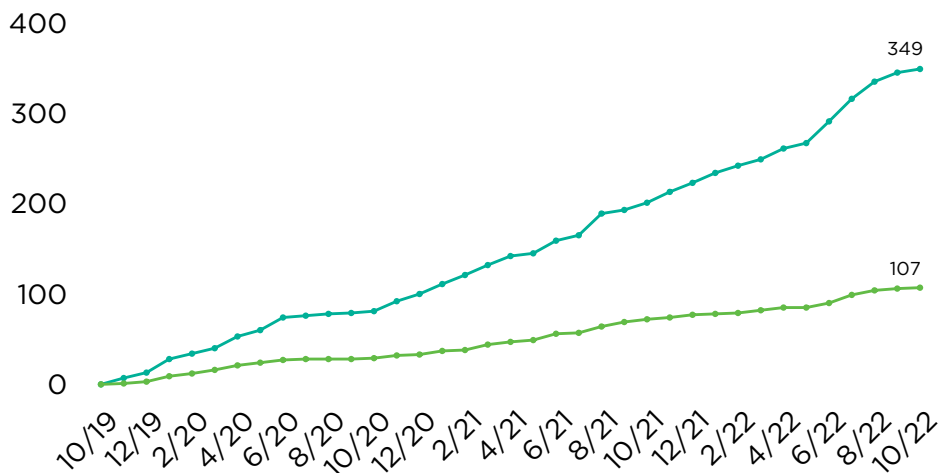
SVCE, in partnership with other CCAs and municipal utilities, launched the Peninsula-Silicon Valley Incentive Project in 2020 to support electric vehicle infrastructure in Santa Clara and San Mateo counties. Through this program, SVCE had committed \$6M in funding for L2 charging stations, in addition to \$6M in funding from the California Energy Commission's (CEC) CALeVIP program for DC fast chargers. After initial delays during the pandemic, all \$6M in DCFC funds are fully reserved and SVCE's Year 1 funding of \$2.3M has been fully reserved. Center of Sustainable Energy (CSE), the program administrator, has dedicated additional resources to processing applications faster. As of October 2022, 130 L2 connectors and 10 DCFC stations have been installed through this program.

ONGOING METRICS

OCTOBER 2022

Heat Pump Water Heater

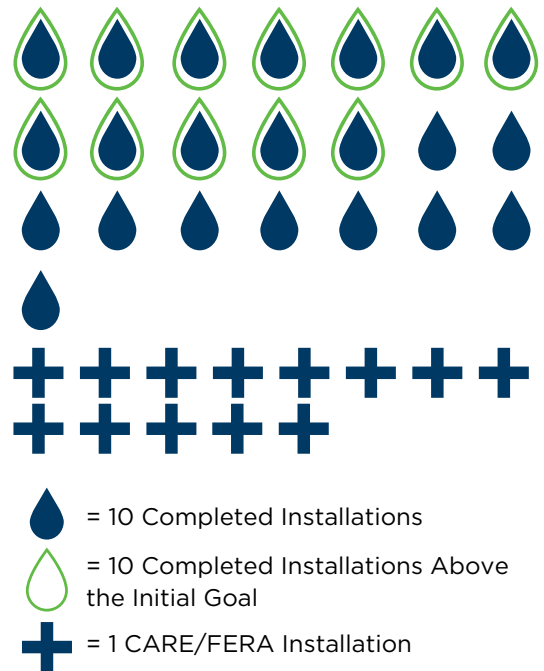
Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters



- Cumulative HPWH Installations
- Cumulative Service Panel Upgrades

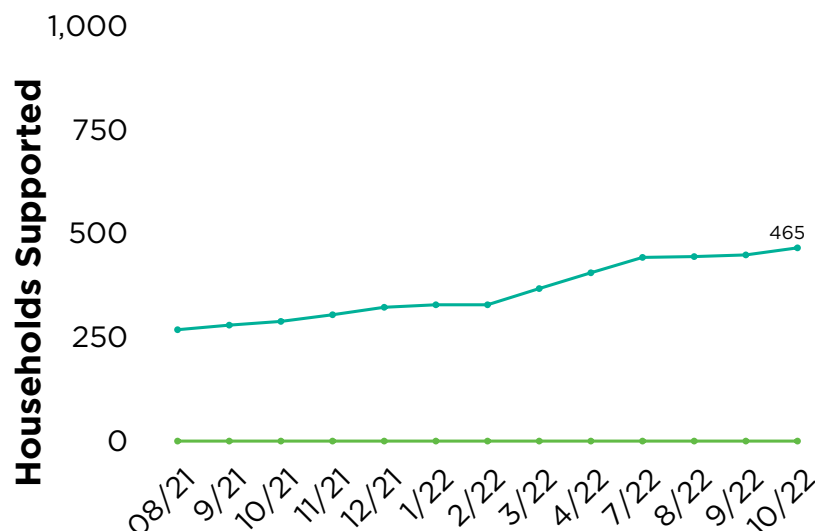
Funding: \$1.15M

Goal: 220 HPWH by 2022



Lights On Silicon Valley

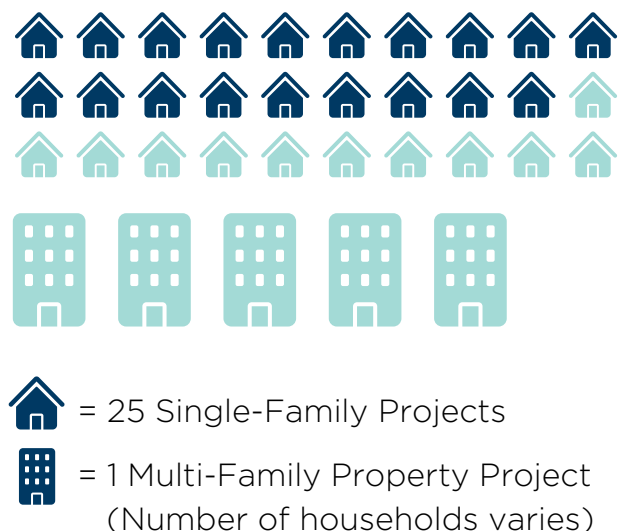
Provide incentives for enrolling solar and battery systems in the SVCE grid services program



- Single-Family
- Multi-Family

Funding: ≤ \$7.4M

Goal: 750 Single-Family + 5 Multi-Family Projects Completed by 2023

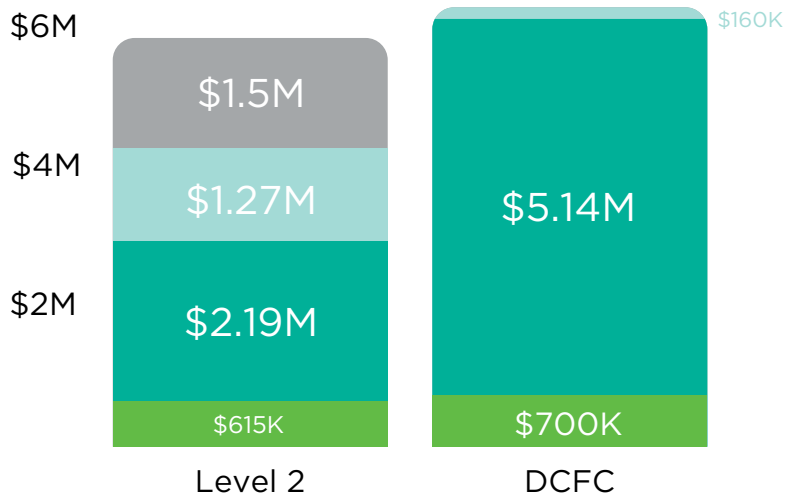


ONGOING METRICS

OCTOBER 2022

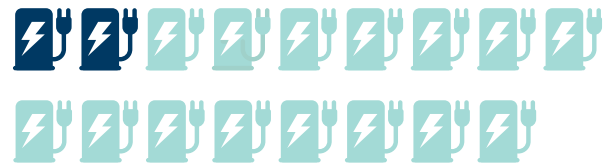
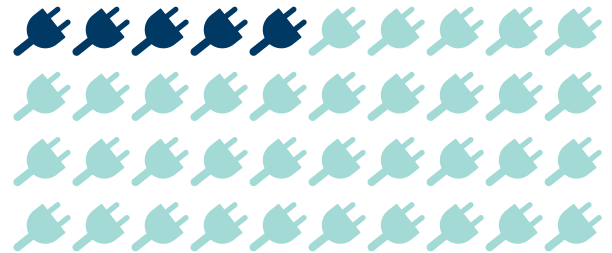
CALeVIP

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



= 25 Level 2 Installations

= 5 DCFC Installations

FutureFit Fundamentals

Provide financial relief to contractors by expanding their knowledge of electrification technologies



Funding: \$1.5M

Goal: 150 Participants Complete the Course (Phase 1)



= 5 Participants Complete Course

● Active ● In Development ● Complete

1. Outreach Events & Sponsorships

Silicon Valley Clean Energy will be connecting with customers at upcoming community and industry events and will be supporting communities through event sponsorship.

Date	Time	Description	Location
November 18	6:00 p.m.	Morgan Hill Community Foundation: Philanthropy Night	Community and Cultural Center, Morgan Hill

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.42%	96.44%
Commercial	96.73%	

3. Customer Credit Updates

CARE and FERA Rate Relief Bill

- SVCE began crediting customer bills in April, and as of October 25, 2022, has applied over 198,000 bill credits of \$12.50, totaling \$2.48M. These credits will continue monthly for income-qualified CARE and FERA customers through November 2022.

4. Member Agency Working Group - October Update

The recent MAWG meeting was held virtually on October 27, 2022 and was attended by 10 different agencies and organizations with a total of 26 participants.

The following agenda items were presented and discussed:

- Power Resources Quarterly Update
- Inflation Reduction Act (IRA) Update
- SVCE 2023 Draft Legislative Policy Platform
- SVCE Program Introduction: FutureFit Homes
- Existing Multifamily EV Charging Ordinances
- Mobile Home Park Programs
- Reach Code Update

5. Press Releases & Media

Press Releases

- [Backup Batteries at Traffic Lights Increase Safety and Energy Resilience in Saratoga, 10-04-2022](#)

Media

- [Saratoga's backup traffic light batteries operate during power outages, The Mercury News, 10-16-22](#)
- [ev.energy partners with Smartenit to launch low-cost, smart EV charging cable to promote equitable access, ev.energy press release, 10-17-22](#)



SVCE Legislative and Regulatory Update

November 9, 2022



Policy Updates

Regulatory Update:

1. Resource Adequacy Reform (RA Reform)
2. Integrated Resource Planning (IRP)
3. Voluntary Allocation Market Offer (VAMO)
4. Net Energy Metering (NEM 3.0)

Legislative Update:

1. Bill Position Matrix
2. Legislative Timeline



Regulatory Update



Key Regulatory Updates

Proceeding	Purpose	Status
Integrated Resource Plan (IRP)	Ensure long-term system planning is on track to meet state's climate and reliability goals.	CPUC issued a staff white paper on adjustments to the IRP process which includes enforcement of IRP plans as a means to reduce reliance on procurement orders. SVCE will file comments (solo or in coordination with CalCCA) on December 15th.
Resource Adequacy: Central Procurement Entity	CPE (IOU) procures local RA on behalf of service territory to ensure local reliability is maintained.	Following PG&E's second failure to procure sufficient resources to meet Local RA needs, Peninsula Clean Energy and Central Coast Community Energy issued a Petition for Clarification ("PFC") asking the Commission to clarify the obligations of other LSEs for RA procurement in instances where the CPE failed. SVCE sent a letter supporting this PFC on 9/26.
Resource Adequacy: Reform	Reform RA construct to better ensure system reliability	The second round of RA Reform workshops ended on October 5th. Workshop leads are finalizing a report covering the workshop findings. It is expected the CPUC will issue a proposed decision on the "Slice-of-Day"/ 24-hour RA framework in Q1 of 2023.



Key Regulatory Proceedings

Proceeding	Purpose	Status
Net Energy Metering ("NEM 3.0")	Update compensation structure for rooftop solar owners.	On May 9, the CPUC reopened the NEM Successor Tariff proceeding ("NEM 3.0"), specifically requesting comments on aspects of the original, December 2021 Proposed Decision (PD). The ruling seeks feedback from parties on the PD's proposed grid access charge, calculation of non-bypassable charges to NEM customers, export compensation and specific rules for low-income customers. The ruling makes no changes to the PD and SVCE's position on the NEM 3.0 PD remains unchanged. In mid-August the CPUC extended the statutory deadline for the proceeding to August 27, 2023. While the CPUC is unlikely to use the full extension, the new PD is unexpected in the imminent future. We will continue to develop ideas for customer program offerings for current and prospective solar customers to promote solar-plus-battery installations in alignment with whole-home electrification.



Legislative Update



SVCE Legislative Positions Matrix

SVCE had successful legislative year- was able to stop bad legislation and make meaningful changes to bills.

Bill	Summary	SVCE Position (Legislative Program Policy)	Status
AB 1814 (Grayson)	Adds CCAs as eligible program administrators for CPUC's Transportation Electrification Program	Support (Climate Mitigation/Clean Energy Funding)	Died
SB 833 (Dodd)	Creates grant program for local government community resiliency plans and to expedite permitting for distributed energy resources.	Support (Climate Mitigation/Clean Energy Funding)	Died
SB 1112 (Becker)	Ensures notification to tenants and property owners for tariff on bill decarbonization charges.	Support (Fuel Switching and Electrification)	Signed by Governor
SB 1100 (Cortese)	Establishes a process for removing individuals who are willfully interrupting meetings	Support (per Board direction)	Signed by Governor



SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status
AB 2061 (Ting)	Requires all entities that receive state or ratepayer funding to submit data on EV station uptime, or the amount of time an EV station is operational.	Support (Fuel Switching and Electrification)	Signed by Governor
SB 1158 (Becker)	Requires load serving entities to report hourly electricity purchases. Requires the CPUC to assess whether reporting demonstrates "adequate progress" towards GHG targets.	Support (Climate Mitigation and Clean Energy Technologies)	Signed by Governor
AB 1944 (Lee)	Allows legislative body members to participate in meetings from private locations and without publishing private addresses on meeting notices.	Support (per Board direction)	Died, legislative vehicle became AB 2449 (Rubio)



SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status
SB 1393 (Archuleta)	Requires CEC to develop new guidelines for local existing building decarb ordinances.	Neutral	Died
SB 881 (Min)	Integrated Resources Plans compliance	Opposed Unless Amended	Died
SB 1287 (Bradford)	Raises Financial Security Rate that CCAs must carry to cover reentry fees for customers involuntarily returning to a Provider of Last Resort.		Died
SB 1020 (Laird)	Establishes interim SB 100 clean energy targets and requires state agencies to use 100% zero and renewable energy by 2030.		Signed by Governor
AB 2204 (Boerner Horvath)	Establishes a Deputy Secretary for Climate within the Labor and Workforce Development Agency to oversee clean energy workforce training.	Support (Climate Mitigation and Clean Energy Technologies)	Signed by Governor



Key State Legislative Milestones

- ~~1/3: Legislature reconvenes~~
- ~~1/10: Governor submits budget~~
- ~~1/31: Deadline to move 2-year bills out of first house~~
- ~~2/18: Bill introduction deadline~~
- ~~4/29: Deadline for policy committees to move fiscal bills to fiscal committees~~
- ~~5/6: Deadline for nonfiscal bills to move to the floor~~
- ~~5/20: Deadline for fiscal committees to move bills to floor~~
- ~~5/27: Last day for bills to pass out of first house~~
- ~~6/15: Budget deadline~~
- ~~8/12: Fiscal Committees to move bills to floor~~
- ~~8/31: Last day for each house to pass bills~~
- ~~9/30: Governor's deadline to sign bills~~

NOVEMBER 2022	DECEMBER 2022	JANUARY 2023	FEBRUARY 2023	MARCH 2023
Board of Directors, November 9:	Board of Directors, December 14: Consent: Minutes October 2022 Treasurer Report Committee Reports Regular Calendar: Rate Change Reach Code Update FutureFit Fundamentals Presentation Acknowledgement of outgoing members Approve 2023 Legislative Policy Discussion on Implementation of Electrification-related Rates Approval of Tariffed on bill pilot program Chair/Vice Chair and Executive Committee Selection Process	Board of Directors, January 11: Consent: Minutes November 2022 Treasurer Report Committee Reports Regular Calendar: Appointment of Chair and Vice Chair Appointment of Executive Committee Reach Code Update Future Public Meetings Planning (AB 2449)	Board of Directors, February 8: Consent: Minutes December 2022 Treasurer Report Committee Reports Regular Calendar: Appointment of SVCE Committees Reach Code Recap Updates to Exhibits C and D of the SVCE JPA	Board of Directors, March : Consent: Minutes January 2022 Treasurer Report Committee Reports Regular Calendar: TBD
Executive Committee, Nov. 14, 1pm: Program Snapshots: FutureFit Homes and Buildings SVCE Committee membership and selection process review Future Public Meetings Planning (AB 2449)	Executive Committee: Cancelled (Combined with Nov. 14th meeting)	Executive Committee, Jan. 27: Program Snapshots Chair and Vice Chair Appointments	Executive Committee, Date TBD: Program Snapshots	Executive Committee, Date TBD: Program Snapshots

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: 11/9/2022

RECOMMENDATION

Staff recommends that the Board of Directors adopt Resolution 2022-30 authorizing the CEO to execute the Power Supply Contract with the California Community Choice Financing Authority (CCCFA) and execute or approve¹ the related supporting agreements to enable SVCE to enter an approximately 30-year energy prepayment transaction. These contracts and agreements are in substantially negotiated form, and staff requests the Board authorize the CEO to make any minor clarifying modifications necessary that do not change the intent or economics of the 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 under the Indenture as the Trust Estate, including amounts owed by SVCE under the Power Supply Contract.
2. The aggregate principal amount of the Bonds shall not exceed \$1,000,000,000.
3. The energy savings to SVCE under the Power Supply Contract for the initial Bond Reset Period, including the Annual Refund (as defined in the Power Supply Contract), shall be at least 8 percent.²

FINANCE AND ADMINISTRATION COMMITTEE AND BOARD REVIEW

At its meeting on October 5, 2022, the Finance and Administration Committee voted unanimously to recommend that the Board approve the staff's request to engage in a second Power Prepay transaction by authorizing the CEO to execute or approve contracts with firms³ providing services enabling the execution of the Prepay transaction and to engage with Morgan Stanley as the Prepay Supplier. At the October meeting, the Board of Directors approved Staff's request.

BACKGROUND

As discussed at the October 2022 Board meeting, SVCE, along with EBCE as a coparticipant, spent over two years executing our first Prepay transaction with Morgan Stanley as the Prepay Bank Supplier (see timeline in Attachment 11 and summary of the first Prepay transaction in Attachment 12). Staff would like to leverage the two years of work put into this structure by replicating it for another Prepay with the same counterparties as

¹ The CCCFA will be a counterparty to many of these agreements.

² The 8 percent saving is relative to a fixed price for energy deliveries under the power supply contract that will be established at the time of the pricing of the bonds using available energy market prices and other information that will be reviewed and approved by SVCE's financial advisor, PFM Financial Advisors LLC.

³ These firms were PFM Financial Advisors LLC & PFM Swap Advisors, Chapman & Cutler (Disclosure/Issuer's Counsel), Ballard Spahr (Bond and Tax Counsel), and Moody's Investor Service Inc (Credit Rating).

Agenda Item: 3**Agenda Date: 11/9/2022**

the first Prepay transaction, except for now working with Ballard Spahr for Bond and Tax Counsel instead of Orrick, Herrington & Sutcliffe as discussed at the October 2022 Board meeting.

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. The Prepay structure enables publicly owned utilities, including CCAs, to reduce their energy costs by financing the acquisition of long-term energy supplies with tax-exempt bonds. Attachment 13 provides an overview of the Prepay structure.

As summarized in the table below, SVCE has worked with a seasoned team of professionals to negotiate and structure the transaction.

Firms	Role
PFM Financial Advisors LLC (PFM)	Municipal Advisor: Advice prepay buyer in negotiations; required by Municipal Securities Rulemaking Board (MSRB)
Chapman & Cutler	Disclosure and Issuer's Counsel: Provide legal counsel and prepare an official statement and prospectus
Ballard Spahr	Bond and Tax Counsel: Represent bondholders and provide tax opinion on the transaction

STRATEGIC PLAN

Entering a Prepayment transaction will further Goals #2, #3, and #16 of the SVCE Strategic Plan.

Goal #2: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner.

Goal #3: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.

Goal #15: Commit to maintaining a strong financial position.

ANALYSIS & DISCUSSION

The initial term of the bonds is expected to be about 5-10 years, and SVCE will not execute the transaction unless, at a minimum, we can achieve an energy savings discount of at least 8 percent during the initial bond period. The actual discount will depend on the spread between taxable and tax-exempt rates. 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. Closer to the time of the pricing of the Bonds, the Repricing Agreement will specify a minimum energy savings threshold for the future reset periods, which is currently anticipated to be about 4 percent. As the transaction moves forward, the remaining shorter tenor of the deal will place downward pressure on future discounts.

The risks to SVCE are minimal as the debt will not be recourse to SVCE. If for any reason the structure falls apart, the energy contract(s) assigned to the Prepay will revert to SVCE, and the loss to SVCE will be the staff time spent on the project and the future savings expected to be generated by the prepayment transaction. The initial consultant and attorney fees are all contingent upon the execution of the transaction and will be financed from the bond proceeds. These fees, excluding underwriting fees, are estimated to be about \$1.05 million (see Attachment 14).

The transaction is expected to cover about 12 percent of our load.

Agenda Item: 3**Agenda Date: 11/9/2022****SUMMARY OF THE TRANSACTION DOCUMENTS**

These are the agreements that SVCE will sign once the Board authorized parameters are met:

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 and CCCFA. The agreement sets the terms for SVCE 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 execute:

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, rights of bondholders, and security of 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 discounts 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 of the transaction. The Appendix A of this document includes background information on SVCE, including the formation of SVCE, service area, customers, sources of clean energy, and other information to inform bondholders on the financial and operational strength of the organization.

FISCAL IMPACT

The proposed prepayment transaction is expected to save SVCE about \$3 to \$4 million per year during the initial term of the bonds. The actual savings will depend on the spread between taxable and tax-exempt rates.

ATTACHMENTS

1. Resolution 2022-30 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; 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

Agenda Item: 3**Agenda Date: 11/9/2022**

7. Prepaid Agreement
8. Trust Indenture
9. Repricing Agreement
10. Preliminary Offering Statement
11. Timeline of SVCE's First Prepay Transaction
12. Summary of the Details of the First Prepay Transaction and Transaction Cost Breakdown
13. Overview of the Prepay structure
14. Estimated Cost Breakdown

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION 2022-30

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; 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 Joint Powers Agreement (as defined below) in June 2018;

WHEREAS, California Community Choice Financing Authority (the “Issuer”) is a joint powers authority established and organized under the Act, with the power and authority to enter into contracts and issue bonds to assist CCAs 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 desirable 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, with such series designation(s) as is determined by CCCFA (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 between SVCE 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, any of the Chief Executive Officer, Chief Operations Officer, Chair of the Board, the Director of Finance (each an “Authorized 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 amount of the prepayment to be made under the Prepaid Agreement shall be established using the monthly quantities of energy to be delivered over an approximately 30-year term and a fixed price determined as of the time of pricing using available market prices and other information and reviewed and approved by SVCE’s financial advisor (the “Fixed Price”), discounted to present value at an agreed discount rate determined at the time of pricing. The prepaid energy will be delivered by the Issuer to SVCE under the Power Supply Contract at a floating day-ahead index price less a monthly discount stated in

dollars per MWh (the “Monthly Discount”). Considering the foregoing, 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 \$1,000,000,000; and

(c) for the initial Reset Period (as defined in the Power Supply Contract), the annual cost savings relative to the Fixed Price with respect to the energy to be delivered to SVCE under the Power Supply Contract for each annual period during the initial Reset Period, taking into account the Monthly Discount and the Annual Refund (as defined in the Power Supply Contract) for each such annual period, shall be at least eight percent (8%).

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 9th day of November, 2022 by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Liz Gibbons, Chair

Attest:

Andrea Pizano, Board Clerk

SM Draft 2 November 2022

POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

SILICON VALLEY CLEAN ENERGY AUTHORITY

Dated as of [____], 2022

TABLE OF CONTENTS

	<u>Page</u>
Article I Definitions.....	2
Section 1.1 Defined Terms	2
Section 1.2 Definitions; Interpretation.....	10
Article II Execution Date and Delivery Period; Nature of Energy Project.....	10
Section 2.1 Execution Date; Delivery Period	10
Section 2.2 Termination Due to Failure to Issue Bonds or Provide Minimum Discount	10
Section 2.3 Nature of Energy Project	10
Section 2.4 Pledge of this Agreement.....	11
Article III Sale and Purchase.....	11
Section 3.1 Sale and Purchase of Energy.....	11
Section 3.2 Pricing.....	11
Section 3.3 No Obligation to Take Base Energy	11
Section 3.4 Reset Period Remarketing.....	12
Article IV Failure to Deliver or Take Energy	13
Article V Transmission and Delivery; Communications	13
Section 5.1 Delivery of Energy.....	13
Section 5.2 Scheduling.....	13
Section 5.3 Title and Risk of Loss	14
Section 5.4 PCC1 Product and Long-Term PCC1 Product	14
Section 5.5 Deliveries within CAISO or Another Balancing Authority.....	16
Section 5.6 Assigned Products.....	16
Article VI Partial Assignments of PPAs	17
Section 6.1 Future PPA Assignments	17
Section 6.2 Updates to Exhibits A-1 and A-2.....	17
Article VII Use of Energy	17
Section 7.1 Tax Exempt Status of the Bonds.....	17
Section 7.2 Priority Energy.....	17
Section 7.3 Remarketing Sales	17
Section 7.4 Qualifying Use	18
Section 7.5 Remediation	18

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Article VIII Representations and Warranties; Additional Covenants	19
Section 8.1 Representations and Warranties of the Parties.....	19
Section 8.2 Warranty of Title.....	20
Section 8.3 Disclaimer of Warranties	20
Section 8.4 Continuing Disclosure	21
Article IX Taxes	21
Article X Dispute Resolution.....	21
Section 10.1 Arbitration.....	21
Section 10.2 Judicial Reference	22
Article XI Force Majeure.....	24
Section 11.1 Applicability of Force Majeure.....	24
Section 11.2 Settlement of Labor Disputes.....	24
Article XII Governmental Rules and Regulations.....	24
Section 12.1 Compliance with Laws	24
Section 12.2 Contests.....	24
Section 12.3 Defense of Agreement	24
Article XIII Assignment	25
Article XIV Payments.....	25
Section 14.1 Monthly Statements	25
Section 14.2 Payment.....	26
Section 14.3 Payment of Disputed Amounts; Correction of Index Price	26
Section 14.4 Late Payment	27
Section 14.5 Audit; Adjustments	27
Section 14.6 Netting; No Set-Off.....	27
Section 14.7 Source of Purchaser's Payments.....	27
Section 14.8 Rate Covenant.....	27
Section 14.9 Pledge of CCA Revenues.....	28
Section 14.10 Financial Responsibility.....	28
Article XV [Reserved].....	28
Article XVI Notices.....	28
Article XVII Default; Remedies; Termination.....	29

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 17.1 Issuer Default	29
Section 17.2 Purchaser Default.....	29
Section 17.3 Remedies Upon Default.....	30
Section 17.4 Termination of Prepaid Agreement	31
Section 17.5 Limitation on Damages.....	31
Article XVIII Miscellaneous	32
Section 18.1 Indemnification Procedure.....	32
Section 18.2 Deliveries	32
Section 18.3 Entirety; Amendments	33
Section 18.4 Governing Law	33
Section 18.5 Non-Waiver.....	33
Section 18.6 Severability	33
Section 18.7 Exhibits	33
Section 18.8 Winding Up Arrangements	33
Section 18.9 Relationships of Parties.....	33
Section 18.10 Immunity.....	34
Section 18.11 Rates and Indices	34
Section 18.12 Limitation of Liability.....	34
Section 18.13 Counterparts	34
Section 18.14 Third Party Beneficiaries; Rights of Trustee	34
Section 18.15 Waiver of Defenses	35

Exhibits

Exhibit A-1 -	Base Energy Hourly Quantities
Exhibit A-2 -	EPS Energy Period Monthly Quantity
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 [____], 2022 (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 Silicon Valley Clean Energy Authority, a joint powers authority and 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 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.]¹

“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.

¹ SM NTD: Subject to confirmation of whether the Initial Assigned PPA will be fixed or floating price.

“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 MSCG, 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.

“Base Energy” means Firm (LD) Energy.

“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 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.

“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 within 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.

“Code” means the Internal Revenue Code of 1986, as amended.

“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, (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month. As used in this definition, “Pricing Interval” means the unit of time for which CAISO establishes a separate price.

“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.

“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 commencing at 00:00 (PPT) on the first day of the Delivery Period, and each Hour thereafter during the Delivery Period.

“Delivery Period” means the period beginning on [____] and ending on [____]; 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 00:00 PPT 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 Master Power Purchase and Sale Agreement dated November 23, 2016 and the Amended & Restated Confirmation thereunder dated as of the date hereof between the Initial PPA Supplier and Purchaser.²

² SM NTD: Initial Assigned PPA provisions to be updated to the extent that the Initial PPA Seller is not MS.

“Initial Assignment Agreement” means that certain Limited Assignment Agreement, dated as of the date hereof, by and among Purchaser, MSES and the Initial PPA Supplier.

“Initial EPS Energy Period” means the “Assignment Period” as defined in the Initial Assignment Agreement.

“Initial PPA Supplier” means MSCG.

“Initial Reset Period” means the period beginning on [____] and ending on [____].

“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 \$[____] per MWh for the Initial Rate Period and thereafter no less than \$[____] 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.

“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 Prevailing Time.

“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 annual 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.

“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 The Bank of New York Mellon Trust Company, N.A., 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 [____], 2022, 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.]³

³ SM NTD: Subject to confirmation of whether the Initial Assigned PPA will be fixed or floating price.

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, provided that Issuer shall owe a payment to Purchaser to the extent that the Contract Price for Energy delivered is negative. 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. 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 in January of each year during the Delivery Period a "Project Administration Fee" equal to the result of \$[] minus the balance of the Administrative Fee Fund (as defined in the Bond Indenture) as of January 1 of such year.

(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 December 31), 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 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. As of the Execution Date, the projected Annual Refund for the Initial Rate Period is \$0.[] 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 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”). 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) 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 PCC1 Product and Long-Term PCC1 Product. To the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s 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. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]**. As used above, “Seller” means “Issuer”, Buyer means “Purchaser”, and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(b) Transfer of Renewable Energy Credits. 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. **[STC REC-1, Non-modifiable. D.11-01-025]**. As used above, “Seller” means “Issuer”, Buyer means “Purchaser”, and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, Non-modifiable. D.11-01-025]**. As used above, “Seller” means “Issuer”, Buyer means “Purchaser”, and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(d) 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 law. 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. **[STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(e) Issuer Representations and Warranties.

Issuer represents and warrants:

- (i) Issuer has the right to sell the Assigned Product from the Applicable Project;
- (ii) Issuer has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Purchaser to any other person or entity;
- (iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Issuer for resale to Purchaser hereunder is not being sold by Issuer back to the Applicable Project or PPA Seller;
- (iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;
- (v) The Assigned Product is free and clear of all liens or other encumbrances;
- (vi) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1 Product in compliance with the California Long-Term Contracting Requirements, if applicable
- (vii) The Assigned Product supplied to Purchaser under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and
- (viii) Issuer will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1) or, if applicable, or compliance with the California Long-Term Contracting Requirements.

Issuer further represents and warrants to Purchaser that, to the extent that the Product sold by Issuer is a resale of part or all of a contract between Issuer and one or more third parties, Issuer represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below during the Assignment Period and throughout the generation period:

- (i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);
- (ii) This Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;
- (iii) The electricity transferred by this Agreement is transferred to

Purchaser in real time; and

- (iv) If the Applicable Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

(f) Subsequent Changes in Law. In the event that the qualifications or requirements of the RPS program, PCC1 Product or the California Long-Term Contracting Requirements change, Issuer shall take commercially reasonable actions to meet the amended qualifications or requirements of the RPS Law, PCC1 Product or the California Long-Term Contracting Requirements but will not be required to incur any unreimbursed costs to comply with the RPS Law, PCC1 or the California Long-Term Contracting Requirements, collectively.

(g) Limitations. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree as follows:

- (i) Issuer has relied exclusively upon the representations and warranties of each respective seller set forth in the Assigned Agreements in making the representations and warranties set forth in this Section 5.4 and has not performed any independent investigation with respect thereto;
- (ii) MSES has agreed under the Prepaid Agreement to terminate or cause MSCG to terminate the applicable Assignment Period in the event that any representation or warranty in this Section 5.4 proves to be incorrect in any respect; and
- (iii) Purchaser agrees that its sole recourse for any breach of the provisions of this Section 5.4 shall be the termination of the applicable Assignment Period and Purchaser shall have no other recourse against Issuer or remedies under this Agreement.

Section 5.5 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.

Section 5.6 Assigned Products. Notwithstanding anything to the contrary herein, the Parties shall have no liability under this Article V with respect to any Assigned Products.

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 remarketed 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 remarketed 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 remarketed 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 remarketed 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.

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.

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. In the event the Issuer receives notice from MSES pursuant to Section 2.12 of the Receivables Purchase Provisions that it requires adequate assurance of performance from the Issuer, Issuer shall provide notice thereof to Purchaser and Purchaser shall provide such adequate assurance within [72 Hours but at least two Business Days of Purchaser's receipt of such notice]⁴. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by MSES pursuant to Section 2.12 of the Receivables Purchase Provisions, 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. In the event Issuer is entitled to demand adequate assurance of performance under this Section 14.10, Issuer may demand at a minimum a prepayment by Purchaser of an amount equal to (a) the amount owed by Purchaser with respect to all Energy delivered by Issuer to Purchaser as of the date of the demand for adequate assurance of performance, plus (b) the amount, as determined and adjusted from time to time by Issuer (with the input of MSES pursuant to the Receivables Purchase Provisions (as defined in the Bond Indenture)) in a Commercially Reasonable manner, expected to be owed by Purchaser with respect to the Energy to be delivered by Issuer to Purchaser during the remainder of the then-current Month and the following Month. 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, immediately upon 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.

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

⁴ NTD: Under review by MS.

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 of 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 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. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. 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 WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE

LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE, THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN COMMODITY PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN.

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;

(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. Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the 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). Issuer 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 Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. 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 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 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), 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 Commodity 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 Commodity Swap Counterparty that 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: _____

Signature Page to Power Supply Contract

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

Signature Page to Power Supply Contract

EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To come.]

EXHIBIT A-2
EPS ENERGY PERIOD MONTHLY QUANTITY

[To come.]

EXHIBIT B
NOTICES

IF TO ISSUER: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901
Email: []

Invoicing/Payments: []

IF TO PURCHASER: Silicon Valley Clean Energy Authority
333 W. El Camino Real Suite 330
Sunnyvale, CA 94087
Attention: Girish Balachandran, CEO
Phone: (408) 721-5301
Email: girish@svcleanenergy.org

Energy Related: SVCE Power Settlements
Phone: (408) 721-5301
Email: invoices@svcleanenergy.org

Invoicing/Payments: SVCE Power Settlements
Phone: (408) 721-5301
Email: invoices@svcleanenergy.org

EXHIBIT C
FORM OF REMARKETING ELECTION NOTICE

[_____]

Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293

The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

To the Addressees:

The undersigned, duly authorized representative of Silicon Valley Clean Energy Authority (the "Purchaser"), is providing this notice (the "Remarketing Election Notice") pursuant to the Power Supply Contract, dated as of [____], 2022 (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[____].

Silicon Valley Clean Energy Authority

By: _____

Printed Name:

Title:

EXHIBIT D

FORM OF FEDERAL TAX CERTIFICATE

This Federal Tax Certificate is executed in connection with the Power Supply Contract dated as of [____], 2022 (the “Supply Contract”), by and between California Community Choice Financing Authority (“Issuer”) and Silicon Valley Clean Energy Authority (“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 [____, 2022] 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 as of the Closing Date (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, whether owned, leased or otherwise contracted for) in the year described in the foregoing clause

(a), is [] 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 []% 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.

_____, 2022

By: _____
[Name]
[Title]

EXHIBIT E
FORM OF OPINION OF COUNSEL TO PURCHASER

California Community Choice Financing Authority
San Rafael, CA

Morgan Stanley Energy Structuring, L.L.C.
New York, NY

Morgan Stanley
New York, NY

The Bank of New York Mellon Trust Company, N.A., as trustee
Jacksonville, FL

Royal Bank of Canada
Toronto, Ontario

Re: Power Supply Contract between Silicon Valley Clean
Energy Authority and California Community Choice
Financing Authority dated as of [____], 2022

Ladies and Gentlemen:

We are Counsel to Silicon Valley Clean Energy Authority (“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 [____], 2022 (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

(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

Monthly Discount:	\$[]/MWh

**EXHIBIT G
FORM OF CLOSING CERTIFICATE**

CLOSING CERTIFICATE OF PURCHASER

_____, 2022

Re: California Community Choice Financing Authority
 Clean Energy Project Revenue Bonds

The undersigned _____ of Silicon Valley Clean Energy Authority (the "*Purchaser*"), hereby certifies as follows in connection with the Power Supply Contract dated as of _____, 2022 (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 _____, 2022 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.

SILICON VALLEY CLEAN ENERGY
AUTHORITY

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 California Community Choice Financing Authority: Section 7.5 Remediation

To the addressees:

The undersigned, duly authorized representative of Silicon Valley Clean Energy Authority (“Purchaser”), hereby certifies as follows in connection with the Power Supply Contract, dated as of [____], 2022 (the “Contract”), between Purchaser and California Community Choice Financing Authority 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.

SILICON VALLEY CLEAN ENERGY
AUTHORITY

By _____
[Name]
[Title]

SM Draft 23 September 2022

LETTER AGREEMENT

[____], 2022

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

California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901
Email: [_____]

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 California Community Choice Financing Authority (“Issuer”) and Silicon Valley Clean Energy Authority (“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 has agreed to assume a portion of Project Participant’s rights and obligations under the Initial Assigned PPA.

(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 Bond 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.
- (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 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.

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) 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.

9. **Limitation of Liability.** Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the 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). Issuer 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 Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. 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 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.

[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

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

ISSUER

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR THIRD PARTY AS PPA SUPPLIER

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [] by and among [], a [] (“**PPA Seller**”), 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.

“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 [] MWhs 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, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

“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 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).

“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 [____], 2022 by and between MSES and Issuer.

“Prepay Power Supply Contract” means that certain Prepay Power Supply Contract dated as of [____], 2022 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**"). To the extent MSCG fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment; provided that, to the extent PPA Buyer makes a payment to PPA Seller with respect to the Delivered Product Payment Obligation because MSCG has failed to pay the Delivered Product Payment Obligation, PPA Seller will have no further claim against MSCG for such amounts, and MSCG will be obligated to pay such amounts to PPA Buyer.

ii. 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**"). Any Claims 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.

iii. Promptly following PPA Buyer's receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than seven days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG (ii) a statement to each of MSCG and the custodian described below indicating (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) **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.

(c) **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.

(d) **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 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.

9. Amendments.

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.

10. 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 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) 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: _____

SILICON VALLEY CLEAN ENERGY AUTHORITY

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.]

EXHIBIT B

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [____] by and among Morgan Stanley Capital Group Inc., a Delaware corporation (“**PPA Seller**”), 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**”), 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 Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (“**MSES**”).

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 MSES, and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSES, and MSES 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, MSES will receive the Assigned Product and MSES 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, MSES 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, Issuer, PPA Seller, PPA Buyer and MSES (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.

“Assigned Energy” means any Electricity associated with the Assigned Product to be delivered to MSES hereunder pursuant to the Assigned Rights and Obligations.

“Assigned Quantity” means all Assigned Product delivered in accordance with the PPA by PPA Seller in each year during the Assignment Period.

“Assigned Product” includes all [Specified Source Energy]/[Carbon Free Energy] (as defined in the PPA) associated with the Assigned Quantity.

“Assigned Product Price” means the [Energy Price]/[Flat Price] (as defined in the PPA and specified in Appendix 1).

“Assigned Rights and Obligations” means (i) the rights of PPA Buyer under the PPA to receive the Assigned Quantity of Assigned Product 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 MSES 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” has the meaning specified in the first paragraph of this Agreement.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Month” means a calendar month.

“MSES” has the meaning specified in the first paragraph of this Agreement.

“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 [____], 2022 by and between MSES and Issuer.

“Prepay Power Supply Contract” means that certain Prepay Power Supply Contract dated as of [____], 2022 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 MSES 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 MSES 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 MSES and the exercise and performance by MSES of the Assigned Rights and Obligations during the Assignment Period.

(c) MSES 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. MSES's sole obligation to PPA Seller will be to pay the Assigned Product Price to PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [4.2] of the Confirmation to the PPA for a quantity determined under this Section 3(a)i (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**"). For purposes of determining the Delivered Product Payment Obligation and other related payment obligations during the Assignment Period, each Party acknowledges and agrees as follows:

(A) the PPA provides for the delivery of the Assigned Quantity on an annual basis, but, notwithstanding the foregoing, the Assigned Quantity shall be settled on a monthly basis by multiplying the [Hourly Quantity (as defined in the PPA)] the number CAISO Energy Delivery Hours (as defined in the PPA) in each Month (the "Settlement Monthly Quantity"), for purposes of determining amounts due under this Agreement, the Prepay Power Supply Contract and the Prepaid Agreement for each month of the Assignment Period (as further described below);

(B) regardless of the Assigned Quantity actually delivered in any month during the Assignment Period, (I) the Delivered Product Payment Obligation shall be an amount equal to the result of (x) the Settlement Monthly Quantity, multiplied by (y) the Assigned Product Price; and (II) the payment due from PPA Buyer to Issuer under the Prepay Power Supply Contract shall be an amount equal to the result of (x) the Settlement Monthly Quantity, multiplied by (y) the Contract Price (as defined in the Prepay Power Supply Contract); and

(C) to the extent that (I) an amount less than the Annual Quantity (as defined in the PPA) has been delivered as of the end of December for any year during the Assignment Period or (II) an Assignment Early Termination Date occurs and the Assigned Quantity actually delivered prior to such date is less than the Settlement Monthly Quantity through such date (any such shortfall amount under

clauses (I) or (II), an “Assigned Shortfall Quantity”), then PPA Buyer will be deemed to have remarketed the Assigned Shortfall Quantity in a Private Business Sale (as defined in Exhibit C to the Prepaid Agreement), and MSES will record any such Assigned Shortfall Quantity as a Ledger Entry on the Private Business Sales Ledger (as each such term is defined in Exhibit C to the Prepaid Agreement effective as of the first day of the month of December or the month in which an Assignment Early Termination Date occurs, as applicable; provided in addition that, notwithstanding anything to the contrary in the Prepaid Agreement, MSES shall have no remarketing payment obligations with respect to any such Assigned Shortfall Quantity.

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSES, 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; provided in addition that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice will be resolved solely between PPA Buyer and PPA Seller. 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 MSES, 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 MSES 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 MSES at the same point where title is passed to MSES pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSES’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 MSES 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 MSES 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 MSES of any other information reasonably requested by MSES 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 MSES 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 MSES's rights or obligations under this Agreement until and unless MSES 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 MSES pursuant to the Assigned Rights and Obligations, MSES 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 MSES for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

(f) **Joinder to Intercreditor Agreement.** In connection with the execution of this Agreement and as a condition precedent to the effectiveness hereof, Issuer shall execute a joinder to the Intercreditor and Collateral Agency Agreement (as defined in the PPA), which will provide Issuer with certain rights under the Security Documents (as defined in the PPA). PPA Buyer agrees that it shall make payments with respect to the Assigned Quantity to Issuer under the Prepay Power Supply Contract on the 20th or preceding business day of the month following deliveries consistent with the terms thereof, and such payments will be made from PPA Buyer's available funds not pledged to the Special Fund (as defined in the PPA); provided that, in the event PPA Buyer fails to make any such payment when due, PPA Buyer shall cause such payment due to Issuer to be included as Regular Charges (as defined in the Security Documents) on the first Distribution Date Certificate (as defined in the Security Documents) to be issued thereafter. If PPA Buyer fails to do so, Issuer shall dispute such Distribution Date Certificate and otherwise pursue its rights to payment thereon pursuant to the terms of the Intercreditor and Collateral Agency Agreement. To the extent Issuer receives any amounts under the Security Documents or Intercreditor and Collateral Agency Agreement in respect of any Receivables purchased by MSES, Issuer shall (i) hold such amounts in trust for the benefit of MSES, (ii) promptly notify MSES thereof and (iii) promptly remit such amounts directly to an account specified by MSES.

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 MSES 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 MSES’s rights or obligations under this Agreement (provided that MSES shall not have a right to terminate under this clause (b) to the extent that MSES (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 MSES 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 MSES 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 MSES 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 MSES, 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 MSES 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) MSES 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 MSES 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 MSES 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 MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSES or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSES 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 MSES 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 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 MSES 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 MSES 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 MSES to PPA Buyer, provided that (i) MSES shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSES 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 MSES 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 MSES 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 MSES 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.

9. Amendments.

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.

10. 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 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, MSES and PPA Seller shall each be deemed to be a

Regulated Entity, and PPA Buyer 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 PPA Seller 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 PPA Seller or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the PPA Seller 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 PPA Seller 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 PPA Seller 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) 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 PPA Seller 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 PPA Seller and PPA Buyer.

(f) **Limitation of Liability.** Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the 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). Issuer 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 Issuer nor the taxing power of the State of California or any political subdivision

thereof is pledged to payments pursuant to this Agreement. 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 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

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name: _____
Title: _____

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

Appendix 1

Assigned Rights and Obligations

PPA: Master Power Purchase and Sale Agreement dated as of [_____] and the Confirmation thereunder dated as of [____], by and between PPA Buyer and PPA Seller

Assigned Delivery Point: [NP15 EZ GEN HUB)]

Assigned Product Price: [To list applicable Energy Price or Flat Price specified in the PPA]

Further Information: [Include additional requirements, if any]

Appendix 2
Notice Information
[To be completed before signing.]

Appendix 3
Copy of Power Sales Contract
[To be attached.]

SM Draft 4 November 2022

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [____] by and among [____], a [____] (“**PPA Seller**”), 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.

“**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 [] MWhs 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, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

“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 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).

“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 [____], 2022 by and between MSES and Issuer.

“Prepay Power Supply Contract” means that certain Prepay Power Supply Contract dated as of [____], 2022 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**"). To the extent MSCG fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment; provided that, to the extent PPA Buyer makes a payment to PPA Seller with respect to the Delivery Product Payment Obligation because MSCG has failed to pay the Delivered Product Payment Obligation, PPA Seller will have no further claim against MSCG for such amounts, and MSCG will be obligated to pay such amounts to PPA Buyer.

ii. 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**"). Any Claims 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.

iii. Promptly following PPA Buyer's receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than seven days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG (ii) a statement to each of MSCG and the custodian described below indicating (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) **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.

(c) **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.

(d) **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 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.

9. Amendments.

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.

10. 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 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) 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: _____

SILICON VALLEY CLEAN ENERGY AUTHORITY

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.]

C&C DRAFT: 11.2.22

PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this “Agreement”) is made and entered into as of [____], 2022, by and between California Community Choice Financing Authority (“CCCFA”) and Silicon Valley Clean Energy Authority (“SVCE”), with respect to the Prepaid Energy Project (defined below). CCCFA 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.

W I T N E S S E T H:

WHEREAS, SVCE is a “community choice aggregator” under the Public Utilities Code; and

WHEREAS, SVCE and certain other community choice aggregators have created CCCFA as 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 SVCE, 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 SVCE are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to SVCE under the terms set forth therein; and

WHEREAS, in order to provide such Energy to SVCE under the Power Supply Contract, 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, CCCFA 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:

“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 the Power Supply Contract.

“Annual Refund” means the annual refund, if any, to be provided to SVCE pursuant to Section 3.2(c) of the Power Supply Contract.

“Assigned Delivery Point” has the meaning specified in the Assignment Agreement.

“Assigned Energy” has the meaning specified in the Assignment Agreement.

“Assigned Product” means Assigned Energy and associated renewable energy credits, green energy attributes and any other product included in the 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 the 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.

“Contract Quantity” means the quantity of Base Energy or Assigned Energy, as applicable, specified in Exhibits A-1 and A-2 of the 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.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt-hours.

“Energy Delivery Point” means the delivery point for delivery of SVCE’s Contract Quantity as specified in the Power Supply Contract, and shall include, if applicable, any Assigned Delivery Point and any Alternate Delivery Point for SVCE.

“Indenture” means the Trust Indenture, dated as of [_____], 2022, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

“Initial Assignment Agreement” with respect to SVCE, the initial assignment agreement or agreements specified in the Power Supply Contract.

“Joint Powers Agreement” means the Joint Powers Agreement by and among the Members of CCCFA named therein, including SVCE, 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.

“MSES” means Morgan Stanley Energy Structuring L.L.C., its successors and permitted assigns.

“Power Supply Contract” means the Power Supply Contract, dated [____], 2022, between CCCFA and SVCE relating to the purchase by SVCE 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 [____], 2022, 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 SVCE of such Energy and related undertakings of CCCFA under the Power Supply Contract.

“Public Utilities Code” means the Public Utilities Code of the State of California, as amended.

“Qualifying Use Requirements” has the meaning set forth in Section 1.1 of the 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 The Bank of New York Mellon Trust Company, N.A., 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, SVCE has entered into the Initial Assignment Agreement specified in the Power Supply Contract with respect to its entire Contract Quantity;

(b) subject to the terms of the applicable Assignment Letter Agreement, SVCE may from time to time enter into additional Assignment Agreements with respect to all or a portion of its Contract Quantity; and

(c) SVCE shall determine, independent of 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 SVCE shall be attributable to SVCE under the 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 SVCE's Assigned Delivery Point and the transfer of other Assigned Product to SVCE, 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 SVCE pursuant to the related Assignment Agreement(s).

Section 4. Qualified Use; Remarketing of Base Energy. As provided in the Power Supply Contract, any portion of SVCE's Contract Quantity that is not delivered as Assigned Energy is required to be delivered as Base Energy and simultaneously remarketed by MSES pursuant to the Prepaid Agreement. SVCE shall be responsible for accounting for any portion of SVCE's Contract Quantity deemed delivered as Base Energy and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements. SVCE 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 SVCE 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 SVCE and no event of default has occurred and is continuing with respect to SVCE under the Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by SVCE. Otherwise, any such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions of SVCE.

Section 7. Re-pricing Information. CCCFA shall provide, or cause MSES to provide, to SVCE such information as is required to be provided by MSES to CCCFA in accordance the Re-pricing Agreement at such times as are required under the Re-pricing Agreement.

Section 9. Project Administration Fee; Reimbursement and Refund of Operating Expenses.

(a) Under Section 3.2(b) of the Power Supply Contract, SVCE is required to include in its payment to CCCFA in January of each year, commencing January 2024, an annual Project Administration Fee in the amount specified therein, determined by CCCFA based on the budgeted Operating Expenses

of CCCFA for the next succeeding annual period. CCCFA agrees to allocate amounts received in respect of the Project Administration Fee to pay Operating Expenses (as defined in the Indenture) as the same become due and payable during such annual period. In the event amounts paid in respect of the Project Administration Fee are not sufficient to pay such Operating Expenses when due, SVCE agrees to pay such additional amounts as are necessary to pay such Operating Expenses upon receipt of notice of the amount due from the Trustee or CCCFA.

(b) As soon as practicable following the end of each annual period referred to in paragraph (a), CCCFA agrees to reconcile the amounts received in respect of the Project Administrative Fee for such annual period with the Operating Expenses paid or accrued for such period. In the event that, following each such reconciliation, it is determined that the amounts received in respect of the Project Administration Fee during the applicable annual period exceed Operating Expenses paid or accrued for such period, CCCFA will provide written notice thereof to SVCE and include the amount of such excess in its Annual Refund to SVCE under the Power Supply Contract.

Section 10. 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 Power Supply Contract.

Section 11. 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 12. 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: _____

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

SM Draft 23 September 2022

CUSTODIAL AGREEMENT

This Custodial Agreement (this “Agreement”) is made and entered into as of [____], 2022, by and among 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”), Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (“MSES”), and The Bank of New York Mellon Trust Company, N.A., a national banking association, (the “Custodian” and together with PPA Buyer and MSCG, the “Parties”, and each individually, a “Party”).

RECITALS:

WHEREAS, California Community Choice Financing Authority (“Issuer”) is issuing its Clean Energy Project Revenue Bonds, [Series 2022B] (the “Bonds”) pursuant to the Trust Indenture, dated as of [____], 2022 (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, MSES and Issuer are entering into that certain Prepaid Energy Sales Agreement, dated as of [____], 2022 (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 [____], 2022 (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 [____], 2022 (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(c)).

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 PPA Assignee to the Custodian pursuant to Section 4(e).

“Issuer Negative Pricing Payment Amount” means the positive difference, if any, for any Month of an Assignment Period between (a) amounts due from Issuer to PPA Buyer under Section 3.2(a) of the Power Supply Contract with respect to negatively priced Energy and (b) amounts due from PPA Buyer to Issuer under Section 3.2(a) of the Power Supply Contract with respect to positively priced Energy.

“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 PPA Assignee 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.

“PPA Assignee” means MSCG or, to the extent that MSCG is a PPA Seller under the applicable Assigned PPA, MSES, in each case, in its capacity as the limited assignee under the applicable Assignment Agreement.

“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, MSES and MSCG hereby appoint The Bank of New York Mellon Trust Company, N.A. 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 PPA Buyer's receipt of a Monthly Statement from a PPA Seller, PPA Buyer shall notify the Custodian of the Delivered Product Payment Amount, the Retained Payment Amount, the Monthly Gross Amount, the Monthly Statement Payment Date, the Custodial Agreement Payment Date as reflected in such Monthly Statement and any Issuer Negative Pricing Payment Amount for such Month.

(b) PPA Assignee shall notify PPA Buyer and each other Party promptly following PPA Buyer's delivery of a Monthly Statement if PPA Assignee believes any information included on such Monthly Statement is incorrect. Following receipt and verification of the information included in any such notice from PPA Assignee, PPA Buyer shall, to the extent appropriate and in consultation with PPA Assignee, issue a corrected Monthly Statement to all Parties.

(c) 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 PPA Assignee and PPA Buyer to the PPA Sellers under the Assigned PPAs, there is hereby established with the Custodian at its office located at 4655 Salisbury Road, Suite 300, Jacksonville, Florida 32256, the following custodial account: a payments account designated as the "[]", bearing Custodian's Account No. [] (the "Assigned PPA Payments Account") and all payments made by PPA Assignee and PPA Buyer hereunder shall be wired to such Assigned PPA Payments Account:

The Bank of New York Mellon
ABA# 021000018
Account Number: []
Account Name: []
ATT: Matthew Kuper 904.645.1947

(b) PPA Assignee and PPA Buyer Monthly Payments.

(i) PPA Assignee shall make payment of the Delivered Product Payment Amount into the Assigned PPA Payments Account 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 into the

Assigned PPA Payments Account 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 with respect to the Retained Payment Amount and the Custodian will pay the absolute value of such amount to PPA Buyer consistent with Section 4(c)(ii).

(iii) For each Month, if any, of an Assignment Period for which there is an Issuer Negative Pricing Payment Amount, PPA Buyer shall make payment of such amount into the Assigned PPA Payments Account on the Custodial Agreement Payment Date; provided that, notwithstanding the foregoing, PPA Buyer shall have no payment obligation hereunder with respect to an Issuer Negative Pricing Payment Amount to the extent that PPA Assignee receives such amount from the PPA Seller pursuant to the terms of the applicable Assignment Agreement.

(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 PPA Assignee and PPA Buyer, respectively, and each wire transfer shall indicate whether the transfer is of amounts received from PPA Assignee 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 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.

(iii) For any Month in an Assignment Period for which an Issuer Negative Pricing Payment Amount is due from PPA Buyer, the Custodian shall, after application of amounts on deposit in the Assigned PPA Payments Account pursuant to clause (i) or (ii) above, as applicable, withdraw amounts on deposit in the Assigned PPA Payments Account to make payment of the Issuer Negative Pricing Payment Amount to PPA Assignee.

(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 13, 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 PPA Assignee has purchased Put Receivables (as defined in the Prepaid Agreement) for amounts owed by PPA Buyer for the Month to which such Monthly Statement relates, PPA Assignee may, at its option, (i) notify the Custodian that it intends to transfer all or any portion of such Put 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 PPA Assignee has notified the Custodian of its intent to transfer any such Put Receivables, PPA Assignee shall cause such Put 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 (b) no duty to inquire as to the provisions of 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 PPA Assignee 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 interpleaded 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. Fees. MSES agrees to pay the Custodian reasonable compensation for the services to be rendered hereunder, which compensation shall be \$[] for each year that this Agreement is in effect. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 8. Reimbursement. MSCG, MSES and PPA Buyer agree, jointly and severally (subject to the second proviso of this Section 8), 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 MSCG, MSES 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 8 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 14 hereof; provided

further, however, that, notwithstanding the joint and several nature of the obligations under this Section 8, 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 9. Taxpayer Identification Numbers; Tax Matters. MSCG, MSES 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.

Section 10. Notices.

(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 Parties' email address specified in Exhibit B. Each Party shall have the right, upon 10 days' prior written notice to the other Parties, 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 11. 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 CALIFORNIA.

(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 12. 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 13. 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 14. Indemnification. MSCG, MSES 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 14 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 8 hereof. The obligations of this Section 14 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 15. Patriot Act. MSCG, MSES 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, MSES and PPA Buyer. Accordingly, prior to opening the Assigned PPA Payments Account described in Section 4 of this Agreement, the Custodian will ask MSCG, MSES 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, MSES's and PPA Buyer's identities, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. MSCG, MSES and PPA Buyer agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies MSCG's, MSES'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.

SILICON VALLEY CLEAN ENERGY
AUTHORITY

By: _____
Name: _____
Title: _____
Taxpayer ID Number: _____

MORGAN STANLEY CAPITAL GROUP
INC.

By: _____
Name: _____
Title: _____
Taxpayer ID Number: _____

MORGAN STANLEY ENERGY
STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____
Taxpayer ID Number: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT A
ASSIGNED PPAS

1. [Description to come.]

EXHIBIT B
NOTICE INFORMATION

PPA Buyer:

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

SVCE Payment Information:

Bank Name: River City Bank
Bank Routing Number: 121133416
Account Number: 6042313416
FBO: Silicon Valley Clean Energy Authority

MSCG:

Morgan Stanley Capital Group Inc.
1585 Broadway
New York, NY 10036-8293
Email: [_____]

MSES:

Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293
Email: [_____]

Custodian:

The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256
Attention: Corporate Trust
Fax: 904.645.1998
Email: BNYM_Gas-Prepays@bnymellon.com

SM Draft 23 September 2022

PREPAID ENERGY SALES AGREEMENT

between

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

and

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

Dated as of [____], 2022

TABLE OF CONTENTS

	<u>Page</u>
Article I. Definitions.....	1
Section 1.1 Defined Terms	1
Section 1.2 Definitions; Interpretation.....	10
Article II. Execution Date and Delivery Period	10
Section 2.1 Execution Date; Delivery Period	10
Section 2.2 Termination by Seller Prior to Prepayment	10
Article III. Sale And Purchase.....	11
Section 3.1 Sale and Purchase of Energy.....	11
Section 3.2 Prepayment	11
Section 3.3 No Obligation to Take Base Energy	11
Section 3.4 Reduction of Contract Quantity	11
Article IV. Failure to Deliver or Take Energy	12
Section 4.1 Assigned Product	12
Section 4.2 Failure to Deliver or Take Due to Force Majeure.....	12
Article V. Transmission and Delivery; Communications	12
Section 5.1 Delivery of Energy.....	12
Section 5.2 Scheduling.....	13
Section 5.3 Title and Risk of Loss	13
Section 5.4 PCC1 Product and Long-Term PCC1 Product	13
Section 5.5 Deliveries within CAISO or Another Balancing Authority.....	16
Section 5.6 Assigned Products.....	16
Article VI. Partial Assignments of PPAs	16
Section 6.1 Future PPA Assignments	16
Section 6.2 Updates to Exhibits A-1 and A-2.....	16
Article VII. Energy Remarketing.....	16
Article VIII. Representations and Warranties.....	17
Section 8.1 Representations and Warranties.....	17
Section 8.2 Additional Representations and Warranties of Buyer	18
Section 8.3 Warranty of Title.....	19
Article IX. Taxes	19

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Article X. Dispute Resolution.....	20
Section 10.1 Arbitration.....	20
Section 10.2 Dispute Resolution.....	20
Article XI. Force Majeure.....	22
Section 11.1 Applicability of Force Majeure.....	22
Section 11.2 Settlement of Labor Disputes.....	23
Article XII. Governmental Rules and Regulations.....	23
Section 12.1 Compliance with Laws	23
Section 12.2 Contests.....	23
Section 12.3 Defense of Agreement	23
Article XIII. Assignment	23
Article XIV. Payments.....	24
Section 14.1 Monthly Statements	24
Section 14.2 Payment.....	25
Section 14.3 Payment of Disputed Amounts	25
Section 14.4 Late Payment	25
Section 14.5 Audit; Adjustments	25
Section 14.6 Netting.....	26
Article XV. Receivables Purchases.....	26
Article XVI. Notices.....	26
Article XVII. Default; Remedies; Termination.....	27
Section 17.1 Seller Default	27
Section 17.2 Buyer Default.....	27
Section 17.3 Non-Default Termination Events.....	28
Section 17.4 Remedies and Termination	30
Section 17.5 Replacement of Swaps	32
Section 17.6 Limitation on Damages.....	33
Section 17.7 Option to Purchase Bonds.....	34
Section 17.8 Termination Payment Adjustment Schedule	34
Article XVIII. Miscellaneous	34

TABLE OF CONTENTS

(continued)

		<u>Page</u>
Section 18.1	Indemnification Procedure.....	34
Section 18.2	Deliveries	35
Section 18.3	Entirety; Amendments	35
Section 18.4	Governing Law	36
Section 18.5	Non-Waiver.....	36
Section 18.6	Severability	37
Section 18.7	Exhibits	37
Section 18.8	Winding Up Arrangements	37
Section 18.9	Relationships of Parties.....	37
Section 18.10	Immunity.....	37
Section 18.11	Rates and Indices	37
Section 18.12	Limitation of Liability.....	39
Section 18.13	Counterparts	39
Section 18.14	Rights of Trustee.....	39
Section 18.15	Waiver of Defenses	39
Section 18.16	U.S. Resolution Stay.....	39
Section 18.17	Rate Changes	40
Exhibit A-1	- Base Energy Hourly Quantities	
Exhibit A-2	- EPS Energy Period Monthly Quantity	
Exhibit B	- Notices	
Exhibit C	- Energy Remarketing	
Exhibit D	- Termination Payment Schedule	
Exhibit D-1	- Termination Payment Adjustment Schedule	
Exhibit E	- Form of Morgan Stanley Guarantee	
Exhibit F	- Pricing and Other Terms	
Exhibit G	- Receivables Purchases	

PREPAID ENERGY SALES AGREEMENT

This Prepaid Energy Sales Agreement (hereinafter “Agreement”) is made and entered into as of [____], 2022 (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 Contract (as defined below), the Project Participant (as defined below) under such Power Supply Contract 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 Participant under the Power Supply Contract.

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 the Project Participant’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 MSCG, Seller, Buyer and 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 Contract, 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 The Bank of New York Mellon Trust Company, N.A., 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 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 Fixed Price” means the fixed price set forth in the Initial Assignment Agreement between Buyer and the Project Participant.]¹

“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 Period, (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month. As used in this definition, “Pricing Interval” means the unit of time for which CAISO establishes a separate price.

“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.

“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 commencing at 00:00 (PPT) on the first day of the Delivery Period, and each Hour thereafter during the Delivery Period.

“Delivery Period” has the meaning specified in Exhibit F.

¹ SM NTD: Subject to confirmation of whether the Initial Assigned PPA will be fixed or floating price.

“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).

“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 the 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 Period and any subsequent EPS Energy Period established by future assignments of power purchase agreements consistent with the Assignment Letter Agreement.

“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 the 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 00:00 (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 Agreement" means that certain Limited Assignment Agreement, dated as of the date hereof, by and among the Project Participant, MSCG, Seller and Buyer.

"Initial EPS Energy Period" means the "Assignment Period" as defined in the Initial Assignment Agreement.

[“Initial PPA Supplier” means MSCG.]²

“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 Contract.

“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.

² SM NTD: Subject to change depending SVCE’s RFP process.

“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 Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the Assignment Letter Agreement.

“PPT” means Pacific Prevailing Time.

“Prepayment” means the amount specified in Exhibit F.

“Prepayment Outside Date” means the date specified in Exhibit F.

“Project Participant” 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.

“PSC Remarketing Election” means, with respect to the Power Supply Contract, that the 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.

“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 The Bank of New York Mellon Trust Company, N.A., 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).

“Swap Counterparty” means Royal Bank of Canada, a bank organized under the laws of Canada, 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 The Bank of New York Mellon Trust Company, N.A., 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.

(a) 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 Participant [on a fixed price basis during the Initial EPS Energy Period and thereafter on a floating price basis]³.

(b) In recognition that Seller will have increased floating price payment obligations to the Swap Counterparty under the Seller Swap with respect to negatively priced Energy and the Swap Counterparty will have increased floating price payment obligations to Buyer under the Buyer Swap with respect to negatively priced Energy, the Parties acknowledge and agree that Seller shall have no payment obligations to Buyer under this Agreement with respect to negatively priced Energy. Furthermore, with respect to any negatively priced Energy remarketed pursuant to this Agreement, Seller's payment obligations under Exhibit C shall be reduced to the extent that such Energy is negatively priced.

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

³ SM NTD: Subject to confirmation of whether the Initial Assigned PPA will be fixed or floating price.

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 in the Bond Indenture) 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 = The amount payable by Seller under this Section 4.2;

Q = The quantity of Energy described in the lead-in to this Section 4.2; and

IP = (i) With respect to Base Energy, the Contract Index Price applicable to such Delivery Hour and Energy Delivery Point for Base Energy; and (ii) with respect to Assigned Energy, (A) the Contract Fixed Price during the Initial EPS Energy Period, and (B) the Day-Ahead Average Price with respect to any other EPS Energy Period.

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 Period and thereafter in connection with the establishment, expiration or termination of any subsequent EPS Energy Period, the Parties shall update (i) the exhibits hereto 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 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 PCC1 Product and Long-Term PCC1 Product. To the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s 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. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009].** As used above, any capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(b) Transfer of Renewable Energy Credits. 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. **[STC REC-1, Non-modifiable. D.11-01-025]**. As used above, any capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, Non-modifiable. D.11-01-025]**. As used above, any capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(d) 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 law. 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. **[STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(e) Seller Representations and Warranties.

Seller represents and warrants:

- (i) Seller has the right to sell the Assigned Product from the Applicable Project;
- (ii) Seller has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Buyer to any other person or entity;
- (iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Seller for resale to Buyer hereunder is not being sold by Seller back to the Applicable Project or PPA Seller;
- (iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;
- (v) The Assigned Product is free and clear of all liens or other encumbrances;
- (vi) Seller will deliver to Buyer all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1 Product in compliance with the California Long-Term Contracting Requirements, if applicable
- (vii) The Assigned Product supplied to Buyer under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in

length, or otherwise in compliance with the California Long Term Contracting Requirements; and

- (viii) Seller will cooperate and work with Buyer, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1) or, if applicable, or compliance with the California Long-Term Contracting Requirements.

Seller further represents and warrants to Buyer that, to the extent that the Product sold by Seller is a resale of part or all of a contract between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below during the Assignment Period and throughout the generation period:

- (i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);
- (ii) This Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;
- (iii) The electricity transferred by this Agreement is transferred to Buyer in real time; and
- (iv) If the Applicable Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

(f) Subsequent Changes in Law. In the event that the qualifications or requirements of the RPS program, PCC1 Product or the California Long-Term Contracting Requirements change, Seller shall take commercially reasonable actions to meet the amended qualifications or requirements of the RPS Law, PCC1 Product or the California Long-Term Contracting Requirements but will not be required to incur any unreimbursed costs to comply with the RPS Law, PCC1 or the California Long-Term Contracting Requirements, collectively.

(g) Limitations. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree as follows:

- (i) Seller has relied exclusively upon the representations and warranties of each respective seller set forth in the Assigned Agreements in making the representations and warranties set forth in this Section 5.4 and has not performed any independent investigation with respect thereto;
- (ii) Seller agrees that it will terminate or cause MSCG to terminate the applicable Assignment Period in the event that any representation or warranty in this Section 5.4 proves to be incorrect in any respect;

- (iii) Buyer agrees that its sole recourse for any breach of the provisions of this Section 5.4 shall be the termination of the applicable Assignment Period and Buyer shall have no other recourse against Seller or remedies under this Agreement; and
- (iv) Section 5.4(d) shall only apply to the provisions of this Section 5.4 and all other provisions of this Agreement shall remain subject to and interpreted in accordance with Section 18.4.

Section 5.5 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.

Section 5.6 Assigned Products. Notwithstanding anything to the contrary herein, the Parties shall have no liability under this Article V with respect to any Assigned Products.

ARTICLE VI. PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 Future PPA Assignments. Subsequent to the Initial EPS Energy Period, the Project Participant, Seller, Buyer and MSCG shall cooperate to obtain EPS Compliant Energy for delivery hereunder in accordance with the Assignment Letter Agreement.

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) the Project Participant is in default under the 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) the Project Participant's decreased Energy requirements, (ii) decreased

demand by the 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 Participant pursuant to the Power Supply Contract;

(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 the Project Participant (or a related joint powers authority selling Energy to the 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 Contract. Buyer shall enforce the provisions of the Power Supply Contract, 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 the 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 Contract which is expressly permitted pursuant to the provisions thereof. A copy of the 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 Contract 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 Contract 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) 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 Contract; or (C) the circumstances set forth in [Section 5(b)(iii)] of the Re-Pricing Agreement regarding replacement of Seller with an Alternative Supplier (as defined in the Re-Pricing Agreement) apply, 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 the 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, Buyer shall put and Seller shall purchase certain Put Receivables (as defined in Exhibit G) from Buyer relating to payment defaults by the Specified Project Participant (as defined in Exhibit G).

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:

Termination Related to:	Optional Non-Default Termination Event:	Potential Terminating Party:
Performance Prohibited by Law	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.	Each of Buyer or Seller

Termination Related to:	Optional Non-Default Termination Event:	Potential Terminating Party:
Termination of Interest Rate Swap by Buyer Where Seller is the Defaulting Party	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 the Project Participant makes a PSC Remarketing Elections for any Reset Period.	Seller
Termination of Power Supply Contract	If the Power Supply Contract has been terminated or are otherwise no longer in effect as of the end of a Reset Period.	Seller

(b) Each of the following events shall constitute an “Automatic Non-Default Termination Event” under this Agreement:

Termination Related to:	Automatic Non-Default Termination Event:
Termination of a Buyer Swap	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.
Termination of a Seller Swap for Seller Defaults and Termination Events	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 <u>Section 17.2</u> or (ii) an Optional Non-Default Termination Event under <u>Section 17.3(a)</u> where Seller is the Terminating Party and (B) except in the case of a

Termination Related to:	Automatic Non-Default Termination Event:
Termination of a Seller Swap for any Other Reason	Seller Specified Termination (as defined in <u>Section 17.5(a)</u> hereof), either such Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period. 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.
Termination of Interest Rate Swap by Seller	Seller designates an Early Termination Date (as defined in the Interest Rate Swap) for any reason under the Interest Rate Swap.
Failed Remarketing	A Failed Remarketing has occurred.
Termination of Morgan Stanley Guarantee	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 <u>Article XIII</u> prior to the end of the Reset Period during which such termination notice was delivered.
Morgan Stanley Guarantee Ceases to be in Full Force and Effect	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 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 <u>Section 18.3(b)</u> , 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);

(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; and

(iii) with respect to an Optional Non-Default Termination Event related to the termination of the Power Supply Contract, if Seller exercises its termination right, the resulting Early Termination Date shall occur as of the end of the then-current Reset 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 MSES 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 MSES 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 DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. 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 WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE, THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN COMMODITY PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE

KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN. THE PARTIES ACKNOWLEDGE THAT THIS IS A SALE OF GOODS SUBJECT TO ARTICLE 2 OF THE NEW YORK UNIFORM COMMERCIAL CODE, INCLUDING WITHOUT LIMITATION, §§ 2-706(6), 2-711, 2-718, AND 2-719.

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 Contract, (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 Power Supply Contract 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(c) 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 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 BUYER:
General Notices: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901
Email: [_____]

Invoicing/Payments: [_____]

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:

“Code” means the Internal Revenue Code of 1986, as amended.

“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:

MRSP = The Minimum Remarketing Sales Price for one MWh

RRPP = The Remediation Remarketing Purchase Price for one MWh

RRF = The balance of the Energy Remarketing Reserve Fund

CLB = 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 Contract.

“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 the Project Participant, 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 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 remarketed from each relevant Delivery Point, and (ii) the Delivery Hours in which such portion of the Contract Quantity is to be remarketed.

(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; provided furthermore that, in the event Seller is obligated to remarket Base Quantities under Section 3.3 of the Agreement, Buyer shall be deemed to have delivered a Monthly Remarketing Notice with respect thereto.

(c) Reserved.

Section 4. Seller’s Remarketing Obligations Generally.

(a) All Energy remarketed by Seller pursuant to this Exhibit C shall be for the benefit of Buyer, meaning all remarketed 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 remarketed under this Agreement in Qualified Sales, (iii) the aggregate amount of Energy remarketed under this Agreement in Non-Private Business Sales, and (iv) the aggregate amount of Energy remarketed under this Agreement in Private Business Sales.

(d) Any amounts due to Buyer for Energy remarketed 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 remarketed or purchased, as applicable. Additionally, the Parties acknowledge and agree that Seller's payment obligations under this Exhibit C shall be reduced to the extent that any Energy remarketed hereunder is negatively priced.

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 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 Day-Ahead Market Price during the Initial EPS Energy Period and (B) the Day-Ahead Average Price during any EPS Energy Period subsequent to the Initial EPS Energy Period. 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 Participant pursuant to Section 7.5 of the Power Supply Contract, 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:

(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 remarketed 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 remarketed 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 the Day-Ahead Market Price applicable to such Energy in the case of a Monthly Remarketing Notice.

(iii) Notwithstanding the foregoing or anything to the contrary herein, provided that (A) the 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 the 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 the 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 remarketed during such Month multiplied by the Net Participant Price.

B. Reserved.

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 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 Monthly Remarketing Notice applied, provided that the aggregate amount delivered by Seller under this clause (A) for any Month shall not be less than the aggregate quantity so remarketed during such Month multiplied by the Net Participant Price:

$$P = Q \times (IP - RF)$$

Where:

P = 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. Reserved.

(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 remarketed 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 remarketed 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 remarketed 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 remarketed 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 applicable 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: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901

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 [____], 2022, with Morgan Stanley Energy Structuring, L.L.C. (hereinafter “Obligor”) (the “Prepaid Agreement”) and (ii) that ISDA Master Agreement, dated as of [____], 2022, the Schedule, dated as of [____], 2022, and Confirmation[s], dated as of [____], 2022, 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 The Bank of New York Mellon Trust Company, N.A., 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) [] (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

Delivery Period:	The period beginning on [] and ending on [] or earlier upon the Early Termination Date
Minimum Discount:	\$[]/MWh for the Initial Reset Period (as defined in the Re-Pricing Agreement), and thereafter an amount no less than \$[]/MWh
Monthly Discount:	\$[]/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 Bond Indenture) pursuant to the Re-Pricing Agreement
Prepayment:	\$[]
Prepayment Outside Date:	[], 2022
Remarketing Fee:	\$0.[50]/MWh for any Energy remarketed pursuant to a Monthly Remarketing Notice
Specified Fixed Price:	\$[]/MWh
Specified Discount:	For Energy delivered [] – []: \$[]/MWh For Energy delivered [] – []: to be the Available Discount (as defined in the Re-Pricing Agreement) for such Reset Period
ESR Fee:	\$[]/MWh
Swap Fee:	\$0.[]/MWh

EXHIBIT G
RECEIVABLES PURCHASES

[To be attached.]

Ballard Spahr draft 9/30/22

TRUST INDENTURE

Between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

\$[_____]

Clean Energy Project Revenue Bonds
Series 2022B-1 (Green Bonds) (Term Rate)

and

Series 2022B-2 (Green Bonds) ([SIFMA/SOFR] Index Rate)

Dated as of [CLOSING MONTH] 1, 2022

TABLE OF CONTENTS

	PAGE
ARTICLE I DEFINITIONS AND GOVERNING LAW	3
Section 1.01. Definitions.....	3
Section 1.02. Captions	28
Section 1.03. Rules of Construction	28
Section 1.04. Governing Law	28
Section 1.05. Consents.....	28
ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS.....	29
Section 2.01. Authorization of Bonds and Refunding Bonds; Application of Proceeds	29
Section 2.02. Terms of Series 2022B Bonds; Payment	30
Section 2.03. Conditions for Issuance of Bonds	31
Section 2.04. Initial Interest Rate Period; Subsequent Interest Rate Periods	33
Section 2.05. Daily Interest Rate Period.....	33
Section 2.06. Weekly Interest Rate Period	34
Section 2.07. Term Rate Period	36
Section 2.08. Commercial Paper Interest Rate Periods	38
Section 2.09. Index Rate Periods	40
Section 2.10. Notice of Conversion	42
Section 2.11. Liquidity Facility	43
Section 2.12. Provisions Regarding Commodity Swap.....	43
Section 2.13. Provisions Regarding Interest Rate Swap.....	45
Section 2.14. CPI Index Rate Periods.....	46
ARTICLE III GENERAL TERMS AND PROVISIONS OF BONDS	49
Section 3.01. Medium of Payment; Form and Date; Letters and Numbers.....	49
Section 3.02. Legends.....	49
Section 3.03. Execution and Authentication.....	49
Section 3.04. Exchange, Transfer and Registry.....	51
Section 3.05. Regulations With Respect to Exchanges and Registration of Transfers	51
Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost.....	52
Section 3.07. Temporary Bonds.....	52
Section 3.08. Payment of Interest on Bonds; Interest Rights Preserved.....	53
Section 3.09. Book Entry System; Appointment of Securities Depository	53
Section 3.10. Subsidy Payments	55
Section 3.11. Limitation of Liability of the Issuer.....	55
ARTICLE IV REDEMPTION OF BONDS AND TENDER PROVISIONS.....	56
Section 4.01. Extraordinary Redemption.....	56
Section 4.02. Sinking Fund Redemption	56

Section 4.03.	Optional Redemption	58
Section 4.04.	Redemption Notice	60
Section 4.05.	Bonds Redeemed in Part	62
Section 4.06.	Redemption at the Election or Direction of the Issuer.....	62
Section 4.07.	Redemption Other Than at the Issuer's Election or Direction.....	62
Section 4.08.	Selection of Bonds To Be Redeemed	63
Section 4.09.	Payment of Redeemed Bonds	63
Section 4.10.	Cancellation and Destruction of Bonds	63
Section 4.11.	Optional Tender During Daily or Weekly Interest Rate Periods	64
Section 4.12.	Mandatory Tender for Purchase on Day Next Succeeding the Last Day of Each CP Interest Term	64
Section 4.13.	Mandatory Tender for Purchase on the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date	64
Section 4.14.	Mandatory Tender for Purchase on Conversion of Interest Rate Period	65
Section 4.15.	General Provisions Relating to Tenders	65
Section 4.16.	Notice of Mandatory Tender for Purchase.....	68
Section 4.17.	Irrevocable Notice Deemed to Be Tender of Bond; Undelivered Bonds Deemed Purchased on Mandatory Purchase Date	69
Section 4.18.	Remarketing of Bonds; Notice of Interest Rates	69
Section 4.19.	The Remarketing Agent.....	70
Section 4.20.	Qualifications of Remarketing Agent; Resignation; Removal	70
Section 4.21.	Successor Remarketing Agents.....	70
Section 4.22.	Tender Agent	71
ARTICLE V	ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF	71
Section 5.01.	Pledge Effected by This Indenture.....	71
Section 5.02.	Establishment of Funds and Accounts	72
Section 5.03.	Project Fund	73
Section 5.04.	Revenues and Revenue Fund; Other Amounts	73
Section 5.05.	Payments from Revenue Fund	75
Section 5.06.	Operating Fund	76
Section 5.07.	Debt Service Fund—Debt Service Account	76
Section 5.08.	Debt Service Fund—Redemption Account	78
Section 5.09.	Commodity Swap Payment Fund	79
Section 5.10.	General Reserve Fund.....	79
Section 5.11.	Energy Remarketing Reserve Fund	80
Section 5.12.	Assignment Payment Fund	81
Section 5.13.	Purchases of Bonds	81
Section 5.14.	Administrative Fee Fund.....	81
ARTICLE VI	DEPOSITORIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS.....	81
Section 6.01.	Depositories	81
Section 6.02.	Deposits.....	82

Section 6.03. Investment of Certain Funds	82
Section 6.04. Valuation and Sale of Investments	84
ARTICLE VII PARTICULAR COVENANTS OF THE ISSUER	85
Section 7.01. Payment of Bonds	85
Section 7.02. Extension of Payment of Bonds.....	85
Section 7.03. Offices for Servicing Bonds.....	85
Section 7.04. Further Assurance	85
Section 7.05. Power To Issue Bonds and Pledge the Trust Estate.....	86
Section 7.06. Power To Fix and Collect Fees and Charges for the Sale of Energy.....	86
Section 7.07. Creation of Liens.....	86
Section 7.08. [Reserved]	86
Section 7.09. Limitations on Operating Expenses and Other Costs	87
Section 7.10. Amendments to Power Supply Contracts	87
Section 7.11. Power Supply Contracts; Energy Remarketing	88
Section 7.12. Energy Purchase Agreement; Energy Supplier Guaranty.....	88
Section 7.13. [Reserved]	89
Section 7.14. Commodity Swap.....	89
Section 7.15. Interest Rate Swap	89
Section 7.16. Accounts and Reports	89
Section 7.17. Payment of Taxes and Charges.....	90
Section 7.18. Tax Covenants	90
Section 7.19. General.....	91
Section 7.20. Bankruptcy	92
Section 7.21. [Reserved]	92
Section 7.22. Replacement of Energy Supplier Guaranty	92
Section 7.23. Avoidance of Failed Remarketing	92
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	92
Section 8.01. Events of Default	92
Section 8.02. Accounting and Examination of Records After Default.....	93
Section 8.03. Enforcement of Agreements; Application of Moneys after Default.....	94
Section 8.04. Appointment of Receiver	95
Section 8.05. Proceedings Brought by Trustee	95
Section 8.06. Restriction on Bondholder's Action	96
Section 8.07. Remedies Not Exclusive	97
Section 8.08. Effect of Waiver and Other Circumstances	97
Section 8.09. Notice of Default.....	97
ARTICLE IX CONCERNING THE FIDUCIARIES.....	97
Section 9.01. Acceptance by Trustee of Duties	97
Section 9.02. Paying Agents; Appointment and Acceptance of Duties.....	97
Section 9.03. Responsibilities of Fiduciaries.....	97
Section 9.04. Evidence on Which Fiduciaries May Act	99

Section 9.05. Compensation	100
Section 9.06. Certain Permitted Acts	100
Section 9.07. Resignation of Trustee	100
Section 9.08. Removal of the Trustee	100
Section 9.09. Appointment of Successor Trustee	101
Section 9.10. Transfer of Rights and Property to Successor Trustee.....	101
Section 9.11. Merger or Consolidation	102
Section 9.12. Adoption of Authentication	102
Section 9.13. Resignation or Removal of Paying Agent and Appointment of Successor.....	102
Section 9.14. Trustee's Reliance.....	102
Section 9.15. Trustee's Liability	103
Section 9.16. Trustee's Agents or Attorneys	104
Section 9.17. Notice of Lien Filings	104
ARTICLE X SUPPLEMENTAL INDENTURES	105
Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders	105
Section 10.02. Supplemental Indentures Effective With Consent of Bondholders	106
Section 10.03. General Provisions	106
ARTICLE XI AMENDMENTS	107
Section 11.01. Mailing.....	107
Section 11.02. Powers of Amendment.....	108
Section 11.03. Consent of Bondholders.....	108
Section 11.04. Notifications by Unanimous Consent	109
Section 11.05. Exclusion of Bonds	109
Section 11.06. Notation on Bonds	110
ARTICLE XII MISCELLANEOUS	110
Section 12.01. Defeasance	110
Section 12.02. Evidence of Signatures of Bondholders and Ownership of Bonds.....	113
Section 12.03. Moneys Held for Particular Bonds	114
Section 12.04. Preservation and Inspection of Documents.....	114
Section 12.05. Parties Interested Herein	114
Section 12.06. No Recourse on the Bonds; Non-Liability of the Issuer	115
Section 12.07. Publication of Notice; Suspension of Publication	115
Section 12.08. Severability of Invalid Provisions.....	115
Section 12.09. Holidays	115
Section 12.10. Notices	115
Section 12.11. Notices to Rating Agencies.....	117
Section 12.12. Counterparts	117
Section 12.13. Waiver of Jury Trial.....	117
Section 12.14. Electronic Signatures	117

Exhibit A — Form of Bonds
Exhibit B — Form of Index Rate Determination Certificate
Exhibit C — Form of Redemption Notice

Schedule I — Initial Project Participant
Schedule II — Scheduled Debt Service Deposits
Schedule III — Terms of Commodity Swaps
Schedule IV — Amortized Value of Series 2022B-1 Bonds

TRUST INDENTURE

THIS TRUST INDENTURE, dated as of [CLOSING MONTH] 1, 2022 (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 The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States and authorized to accept and execute trusts of the character herein, 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 Clean 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 the 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

(ii) the performance and observance by the Issuer of all the covenants expressed or implied in this Indenture and in the Bonds,

the Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of the Issuer in and to the Trust Estate, subject to conveyance, assignment and pledge of the Commodity Swap Payment Fund in favor of the Commodity Swap Counterparty as set forth below, and further 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 the Issuer and the Commodity Swap Counterparty thereunder, and in order to secure the payment of the Commodity Swap Payments, the Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of the Issuer in the Commodity Swap Payment Fund and the amounts on deposit therein, 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, which conveyance, assignment and pledge shall have priority over the foregoing conveyance, assignment and pledge of the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Bonds and the Interest Rate Swap Payments;

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 the 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 the 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 the Issuer to the Holders of the 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 the Issuer, who may be the accountant or firm of accountants who regularly audit the books of the 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) of the California Government Code, 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 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 by a major market maker in municipal securities, as the quotation agent, selected by the Issuer, based on the industry standard method of calculating bond prices (as such industry standard prevailed on the date such Bond began to bear interest at its current Term Rate), with a delivery date equal to the date of redemption of such Bond, 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 on the date such Bond began to bear interest at its current Term Rate, which, in the case of the initial Term Rate Period for the Series 2022B-1 Bonds and certain dates, produces the amounts for all of the Series 2022B-1 Bonds set forth in Schedule IV; *provided* that in the case of a redemption of the Series 2022B-1 Bonds pursuant to Section 4.03(b), the Amortized Value of the Series 2022B-1 Bonds shall be the percentage of the principal amount thereof for the applicable redemption date set forth in Section 4.03(b).

“*Applicable Factor*” means [(a) with respect to the initial issuance of a Series of Bonds bearing interest at a SOFR Index Rate, the percentage or factor of the SOFR Index 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 SOFR Index Rate Period (including a change in such Interest Rate Period from one SOFR Index Rate Period to another SOFR Index Rate Period), the percentage or factor of the SOFR Index determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate or Index Rate Continuation Notice, provided in each case that the 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 constant for the duration of the applicable SOFR 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, as applicable, in accordance with Section 2.09(a), 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 (or the product of the Applicable Factor and the applicable Index, as the case may be) to determine the Index Rate. Once so determined, 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 Refinitiv Global Markets, Inc. at least one Business Day and not more than 15 Business Days prior to the date that notice of redemption is required to be given pursuant to Section 4.04. 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 Refinitiv Global Markets, Inc. and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Refinitiv Global Markets, Inc. 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 Analytics, Inc. and is available to its subscribers through its internet address: www.mma-research.com. In the further event Municipal Market Analytics, Inc. 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 the Issuer, with prior written notice to and 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.

"BLS" means the Bureau of Labor Statistics of the U.S. Department of Labor.

"Board" means the Board of Directors of the 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 the Issuer delivered to the Trustee.

"Bond" or *"Bonds"* means any of the Bonds and Refunding Bonds authorized by Section 2.01 of, and at any time Outstanding pursuant to, this Indenture.

“*Bond Counsel*” means Ballard Spahr 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 the 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 the 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 the 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 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, and (e) for purposes of determining the SIFMA Index Rate and the SOFR 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.

“*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 the Issuer, with written notice to the Trustee, pursuant to the applicable Calculation Agent Agreement and the Indenture. The initial Calculation Agent for the Series 2022B Bonds shall be The Bank of New York Mellon Trust Company, N.A.

“*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 the Issuer with respect to such Series of Bonds providing for the determination of the applicable Index Rate in accordance with Section 2.09 or Section 2.14, as originally executed or as it may from time to time be supplemented or modified pursuant to the terms thereof and this Indenture, as applicable.

“*Cede*” means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds pursuant to Section 3.09.

“*Clean Energy Project*” means the 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.

“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 the Bonds of such Series.

“Commodity Swap” means the ISDA Master Agreement, Schedule and Confirmation between the Issuer and the Commodity Swap Counterparty, or any replacement agreement permitted by Section 2.12(b), pursuant to which the Issuer will pay to the Commodity Swap Counterparty an index based floating price and the Commodity Swap Counterparty will pay to the 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 the 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 the Issuer by the Commodity Swap Counterparty.

“Continuing Disclosure Undertaking” means the Continuing Disclosure Undertaking, dated the date hereof, between the Issuer and the Dissemination Agent, as the same may be amended from time to time.

“Contract Price” has the meaning assigned to such term in the Power Supply Contracts.

“Conversion” means (a) a conversion of a Series of Bonds from one Interest Rate Period to another Interest Rate Period, (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 and (c) with respect to a Series of Bonds bearing interest in a Term Rate Period, the establishment of a new Term Rate and/or a new Term 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 Clean Energy Project, including:

- (a) the amount of the prepayment required to be made by the 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 the Clean Energy Project;
- (e) the allowance for working capital requirements of the Issuer with respect to the Clean Energy Project in such amounts as shall be deemed reasonably necessary by the 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 (e) and (f) 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 any Bond of a Series of Bonds in the Commercial Paper Interest Rate Period, 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 (i) the total of CPI for the applicable Reference Month less CPI for the twelfth month prior to the applicable Reference Month, divided by (ii) CPI for the twelfth month prior to the applicable Reference Month, which formula would be expressed mathematically as $((CPI_t - CPI_{t-12}) / CPI_{t-12})$, where:

CPI_t = CPI for the applicable Reference Month; and

CPI_{t-12} = CPI for the twelfth month prior to the applicable Reference Month.

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 (i) the CPI Index Rate Formula and (ii) 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 The Bank of New York Mellon Trust Company, N.A., 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 the 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, that is a Qualified Investment, among the Trustee, the Issuer and a provider, or between the Issuer and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund. The initial Debt Service Fund Agreement shall be the Debt Service Account Investment Agreement between the Issuer and Morgan Stanley Capital Group Inc., dated the Initial Issue Date.

“Debt Service Fund Agreement Guaranty” means any unconditional guaranty, in favor of the 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 the 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 the Issuer, pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent appointed by the 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.

“*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 the 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.

“*Energy*” has the meaning given to such term in the Power Supply Contracts.

“*Energy Purchase Agreement*” means the Prepaid Energy Sales Agreement, dated as of [PRICING DATE], 2022, between the 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.

“*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, the 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, in and of itself, cause interest on the applicable Bonds to be included in gross income for purposes of federal income taxation.

“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 2022B 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 and including the next December 31, or (b) such other twelve-month period established by the 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 the 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.

The determination as to whether any bond, note or other obligation constitutes a Government Obligation shall be made solely at the time of initial investment or purchase; *provided that*, the Trustee shall have no responsibility for determining whether any bond, note or other obligation is 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 SIFMA Index, the SOFR Index or CPI, as applicable.

“*Index Rate*” means a SIFMA Index Rate, the SOFR Index Rate or a CPI Index Rate, as applicable.

“*Index Rate Determination Certificate*” means a Written Certificate delivered by the 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 (i) the Series 2022B-2 Bonds during the Initial Interest Rate Period, 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]/[Thursday of each week or, if Thursday is not a Business Day, the next succeeding Business Day], and (ii) with respect to any other 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, Thursday 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 2022B Bonds, the period from the Initial Issue Date to and including [_____] 31, 20[___]; *provided* that in the event that all of the Series 2022B 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 2022B Bonds.

“Initial Mandatory Purchase Date” means [_____] 1, 20[___], which is the day following the last day of the Initial Interest Rate Period for the Series 2022B Bonds.

“Interest Accrual Date” means, with respect to any Bond (a) during any Daily Interest Rate Period or Weekly Interest Rate Period for such Bond, the first day thereof and, thereafter, each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Daily Interest Rate Period or Weekly Interest Rate Period, as applicable, (b) during any Index Rate Period for such Bond, the first day thereof and, thereafter each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Index Rate Period, except as otherwise provided in the Supplemental Indenture for such Bond, (c) during any Term Rate Period for such Bond, the first day thereof and, thereafter, each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Term Rate Period, and (d) for each CP Interest Term for such Bond within a Commercial Paper Interest Rate Period, the first day thereof.

“Interest Payment Date” means, with respect to any Bond (a) during any Daily Interest Rate Period or Weekly Interest Rate Period for such Bond, the first Business Day of each Month, (b) during any Index Rate Period for such Bond, the first Business Day of each Month, except as otherwise provided by Supplemental Indenture for such Bond, (c) during any Term Rate Period for such Bond, each February 1 and August 1, *provided* that the first Interest Payment Date for any Term Rate Period shall be at least ninety (90) days from the first day of such period, (d) during any Commercial Paper Interest Rate Period for such Bond, the day next succeeding the last day of each CP Interest Term for such Bond, (e) any redemption date for such Bond, (f) any Mandatory Purchase Date for such Bond, and (g) the Maturity Date of such Bond.

“Interest Rate Determination Certificate” means a certificate of the Issuer delivered to the Trustee no later than 30 days prior to the effective date of the new Interest Rate Period, setting forth the applicable Interest Rate Period and, during such Interest Rate Period, the next occurring

Mandatory Purchase Date, and (i) for Bonds bearing interest at a Term Rate, the interest rate(s) for such Bonds during such Interest Rate Period and (ii) for Bonds bearing interest at an Index Rate, the Index, the Index Rate Reset Date, the Applicable Spread and the CPI and the CPI Interest Period, if applicable, for such Bonds during such Interest Rate Period.

“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 at all times bear interest in 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 the Issuer and the Interest Rate Swap Counterparty, pursuant to which the 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 the 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), in each case as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the terms thereof and this Indenture, as applicable; *provided that*, as long as no Interest Rate Swap has been entered into by the 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 the Issuer.

“Interest Rate Swap Receipts” means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the 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 2022B 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, the Issuer, the Trustee and the Custodian.

“Issuer Purchase Account” means the Account by that name in the Bond Purchase Fund.

“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 2022B 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 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 the Issuer in a Written Notice delivered to the Trustee.

“Morgan Stanley” means Morgan Stanley, a Delaware corporation.

“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 Power 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 the Clean Energy Project, (a) the Issuer'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 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 the Issuer's obligations under the Power Supply Contracts; (b) any other current expenses or obligations required to be paid by the Issuer under the provisions of this Indenture (other than Debt Service on the Bonds and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of the Issuer's obligations under the Power Supply Contracts; (c) fees payable by the Issuer with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses, and all other reasonable administrative and operating expenses of the Issuer, which are incurred by the Issuer with respect to the Bonds, this Indenture, or the Clean Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by the Issuer with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by the Issuer, including, without limitation, directors and officers liability insurance allocable to the Clean Energy Project; provided that, for purposes of Section 5.05(ii), Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. 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 the 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 the Issuer) selected by the 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 paid or deemed to have been paid as provided in Section 12.01; 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, 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 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 Power Supply Contract 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 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 Power 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, (e) the Assignment Payment Fund and (f) the Commodity Swap Payment Fund, in each case including the Accounts in each of such Funds and in the case of

the Commodity Swap Payment Fund, subject to the prior pledge thereof in favor of the Commodity Swap Counterparty.

“Power Supply Contract” means (a) each of the contracts for the sale by the Issuer of Energy from or attributable to the Clean 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 the Issuer of Energy from or attributable to the Clean 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.

“Prepaid Clean Energy Project Administration Agreement” means the Prepaid Clean Energy Project Administration Agreement, dated as of [PRICING DATE], 2022, between the Issuer and Silicon Valley Clean Energy Authority, as the same may be amended from time to time.

“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 a Power Supply Contract with the Issuer in accordance with the assignment and novation requirements set forth in Section 7.10(d)(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 of this Indenture, (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 the 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), 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 and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(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 the Issuer and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

provided, that the Issuer shall monitor, or shall cause to be monitored, ratings and shall determine 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 evidence satisfactory to the Issuer, so designated in a Written Statement of the 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 Power Supply Contracts and provided in a Written Notice of the 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” means (i) with respect to any Interest Payment Date in respect of any Daily Interest Rate Period, Weekly Interest Rate Period, Index Rate Period, Commercial Paper Interest Rate Period, the Business Day immediately preceding such Interest Payment Date, and (ii) with respect to any Interest Payment Date in respect of any Term Rate Period, the 15th day of the Month (whether or not such day is a Business Day) immediately preceding the Month in which such Interest Payment Date falls.

“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 the Issuer and the Remarketing Agent for such Series of Bonds.

“Remarketing Proceeds Account” means the Account by that name within the Bond Purchase Fund.

“Remarketing Provisions” means the electricity remarketing provisions set forth in Exhibit C to the Energy Purchase Agreement.

“*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 the 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 12.11 (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 the Issuer 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 the Issuer under the Power Supply Contracts and the Energy Purchase Agreement or otherwise payable to the Trustee for the account of the Issuer for the sale and/or transmission of Energy or otherwise with respect to the 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;

(c) any Commodity Swap Receipts received by the Trustee on behalf of the 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) any amounts paid by the Project Participants under a Prepaid Clean Energy Project

Administration Agreement; (x) any Assignment Payment received from the Energy Supplier; (y) Interest Rate Swap Receipts; and (z) amounts paid by the Project Participants in respect of the Project Administration Fee.

“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 the 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 the 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 2022B-1 Bonds, Series 2022B-2 Bonds and any other Bonds designated as a Series authorized to be issued hereunder pursuant to Section 2.01.

“*Series 2022B Bonds*” means, together, the Series 2022B-1 Bonds and Series 2022B-2 Bonds.

“*Series 2022B-1 Bonds*” the Clean Energy Project Revenue Bonds, Series 2022B-1 (Green Bonds) (Term Rate) authorized to be issued under Section 2.01.

“*Series 2022B-2 Bonds*” means the Clean Energy Project Revenue Bonds, Series 2022B-2 (Green Bonds) ([SIFMA/SOFR] Index Rate) authorized to be issued under Section 2.01.

“*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 Refinitiv Global Markets, Inc. 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, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. 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 the 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 2022B Bonds, the amounts so designated in Section 4.02, and with respect to any other Series of Bonds, each amount, if any, so designated in the applicable Supplemental Indenture.

“*SOFR*” means the Secured Overnight Financing Rate reported on the NY Federal Reserve’s Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing SOFR as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date. If SOFR 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 designated by the Issuer in writing (with notice to, and which is available to, the Calculation Agent) in compliance with Section 2.09(b).

“*SOFR Accrual Period*” means the number of actual days from (and including) (a) the Initial Issue Date or the preceding Interest Payment Date, whichever is most recent, to (but not including) (b) the next succeeding Interest Payment Date, regardless of the actual number of calendar days in any Month.

“*SOFR Effective Date*” shall mean each Business Day. Each SOFR Effective Date is an Index Rate Reset Date for all purposes of this Indenture unless the context clearly requires otherwise.

“*SOFR Effective Period*” means the number of actual days from a SOFR Effective Date to the next SOFR Effective Date.

“*SOFR Index Rate*” means a daily variable interest rate equal to the sum of (a) the product of SOFR and the Applicable Factor, plus (b) the Applicable Spread on each day of a SOFR Effective Period, not to exceed the Maximum Rate.

“*SOFR Index Rate Period*” means, with respect to a Series of Bonds, an Index Rate Period during which such Bonds bear interest at the SOFR Index Rate.

“*SOFR Interest Calculation Date*” means the last Business Day of each Month.

“*SOFR Lookback Date*” means the third Business Day immediately preceding each SOFR Effective Date.

“*SOFR Publish Date*” means the second Business Day immediately preceding each SOFR Effective Date.

“*Special Record Date*” has the meaning given to such term in Section 3.08.

“*Special Tax Counsel*” means Ballard Spahr 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 the 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.

“*State*” means the State of California.

“*Subsidy Payments*” means, with respect to a Series of Bonds issued under a provision in the Internal Revenue Code that creates a 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 the 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 the 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, each 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 2022B 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 the 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 the Issuer 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 the 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 the Issuer in, to and under the Energy Supplier Guaranty, (g) all right, title and interest of the Issuer in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of the 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 The Bank of New York Mellon Trust Company, N.A. 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 2022B Bonds, Morgan Stanley & Co. LLC, and (b) with respect to any other Series of Bonds, the municipal securities broker dealer engaged by the 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 Series of Bonds.

“*Written Certificate*,” “*Written Direction*,” “*Written Instrument*,” “*Written Notice*,” “*Written Request*” and “*Written Statement*” of the Issuer means in each case an instrument in writing signed on behalf of the 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, Instrument, 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, Instrument, 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, Instrument Notice, Request or Statement of the 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, instrument, 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, instrument, 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 the 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 the Clean Energy Project, the \$[] Clean Energy Project Revenue Bonds, Series 2022B-1 (Green Bonds) (Term Rate), which shall bear interest during the Initial Interest Rate Period at a Term Rate, and the \$[] Clean Energy Project Revenue Bonds, Series 2022B-2 (Green Bonds) ([SIFMA/SOFR] Index Rate), which shall bear interest during the Initial Interest Rate Period at a [SIFMA/SOFR] Index Rate, and which shall be entitled to the benefit, protection and security of this Indenture are hereby authorized to be issued.

(b) The proceeds of the Series 2022B Bonds shall be deposited with the Trustee and disbursed, transferred and applied as provided in a Written Request of the Issuer delivered to the Trustee upon the issuance of the Series 2022B Bonds.

(c) In addition to the Series 2022B 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 of 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 Refunding Bonds, and if such Interest Rate Period is to be an Index Rate Period, the applicable Index or CPI, and the Applicable Spread, 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, the Issuer shall have entered into an Interest Rate Swap with respect to such Series of Bonds, and if such Bonds are to bear interest at a Daily Interest Rate, a Weekly Interest Rate or CP Interest Term Rates, the Issuer shall have appointed a Remarketing Agent for such 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 2022B Bonds; Payment. (a) The Series 2022B 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 2022B 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 the 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 as of the close of business on the Regular Record Date for such Interest Payment Date, whether or not such Regular Record Date is a Business Day, which books 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 applicable Regular Record Date (which request 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. The Issuer shall provide Written Notice to the Trustee of the appointment of any additional Paying Agent.

(b) The Series 2022B 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 2022B-1 Bonds shall be a Term Rate Period, the Initial Interest Rate Period for the Series 2022B-2 Bonds shall be an Index Rate Period ([SIFMA/SOFR] Index) and the Series 2022B Bonds shall bear interest during such Interest Rate Periods at the rates set forth below:

SERIES 2022B-1 BONDS

MATURITY DATE	PRINCIPAL AMOUNT	INTEREST RATE

MATURITY DATE	PRINCIPAL AMOUNT	INTEREST RATE

SERIES 2022B-2 BONDS

MATURITY DATE	PRINCIPAL AMOUNT	INDEX	APPLICABLE SPREAD
[] 1, 20__		[SIFMA/SOFR] Index	[] basis points

(c) Interest on the Series 2022B Bonds shall be payable to the date on which such Bonds shall have been paid in full. Interest on the Series 2022B-1 Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Series 2022B-2 Bonds shall be computed on the basis of a 365 or 366-day year, as applicable, and the actual number of days elapsed. Interest on the Series 2022B Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date for such period and ending on the day immediately preceding such Interest Payment Date. The first Interest Payment Date for the Series 2022B-1 Bonds is [] 1, 20[23]. The first Interest Payment Date for the Series 2022B-2 Bonds is [] 1, 20[22].

(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 the 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 the Issuer and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered upon the Written Direction of the 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 the Issuer that authorize the execution and delivery of the Bonds of such Series, together with a Written Request as to the authentication and delivery of the Bonds of such Series, signed by an Authorized Officer;

(b) An Opinion or Opinions of Counsel to the effect that (i) the Issuer has the right and power to authorize and enter into this Indenture, the Power Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap, and (ii) the Power Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap have been duly and lawfully authorized, executed and delivered by the Issuer and (assuming due authorization, execution and delivery by, and validity and binding effect upon, the other parties thereto) are valid and binding obligations of the Issuer, and no other authorization for the Power 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, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, 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 of such Series constitute the valid and binding limited obligations of the Issuer; (ii) this Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer; and (iii) this Indenture creates a valid pledge to secure the payment of principal of and interest on the Bonds, of 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; *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, receivership, debt adjustment, moratorium reorganization, arrangement, fraudulent conveyance, or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, and the valid exercise of the sovereign police powers of the State, 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 Power 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 Power Supply Contract between such Project Participant and the 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 and such additional exceptions as may be agreed to by the 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 2022B Bonds shall be initially issued in the Interest Rate Period set forth in Section 2.02(b). Upon the purchase of the Series 2022B Bonds on a Mandatory Purchase Date, the Interest Rate Period for each Series of the Series 2022B 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 2022B 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, notwithstanding anything herein to the contrary, no Bond shall bear interest in excess of the Maximum Rate. The initial Interest Rate Period for any Series of Bonds (other than the Initial Interest Rate Period for the Series 2022B Bonds) shall be established pursuant to the related Supplemental Indenture.

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 2.05(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 and by a form of the notice to be mailed by the Trustee as provided in Section 2.07(c). 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 Section 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) The 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 to the Trustee.

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 and a form of the notice to be mailed by the Trustee pursuant to Section 2.08(c). 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 any 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 any Applicable Factor applicable to such Bonds for the duration of the applicable Index Rate Period, and shall specify such Applicable Spread and any Applicable Factor selected by the Issuer in the Index Rate Determination Certificate for the applicable Index Rate Period. The Applicable Spread and any Applicable Factor shall 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. One Business Day prior to the Initial Issue Date of the Series 2022B-2 Bonds, the [SIFMA/SOFR] 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.

(ii) 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, the Business Day immediately succeeding such Wednesday, 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.

(iii) With respect to each SOFR Index Rate Period, the Calculation Agent shall (A) determine and provide to the Trustee by Electronic Means the SOFR Index by 4:00

p.m., New York City time, on each SOFR Publish Date, and (B) determine and provide to the Trustee by Electronic Means the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date.

(iv) During any Index Rate Period, interest shall be computed on the basis of a 365/366-day year and actual days elapsed. The Calculation Agent shall calculate and provide by Electronic Means to the Issuer and the Trustee the amount of interest due and payable on each Series of Bonds bearing interest at an Index Rate at least one (1) Business Day prior to each Interest Payment Date. The amount of interest due on a Series of Bonds bearing interest at the SIFMA Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the calendar month immediately preceding such Interest Payment Date based on the per annum rate equal to the daily weighted average of the SIFMA Index. The amount of interest due on a Series of Bonds bearing interest at the SOFR Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the SOFR Accrual Period immediately preceding such Interest Payment Date. 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 to the nearest six decimal places (with 0.0000005 being rounded up to 0.000001).

(v) 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.

(vi) 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 and a form of the notice to be mailed by the Trustee pursuant to Section 2.09(d).

(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 or a 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 the Clean Energy Project, the 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 the Issuer) from the Commodity Swap Payment Fund.

(iii) Commodity Swap Receipts shall be payable directly to the Trustee (for the account of the 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) Except as provided in clause (iii) below, the Issuer agrees that it will not exercise any right to declare an early termination date under the Commodity Swap unless either (A) the 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) the Issuer causes or permits the termination of the Energy Purchase Agreement prior to or as of such early termination date.

(ii) The 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 at any time 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) the Issuer may, subject to clause (i) above, terminate the Commodity Swap if the Issuer has the right to do so, and (B) the 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 the 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, the 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 the 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, the 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 the 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 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 or a Commercial Paper Interest Rate Period, the Issuer shall enter into an Interest Rate Swap with an 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 the 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 the 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) The Issuer agrees that it will not exercise any right to declare an early termination date under the Interest Rate Swap unless either (A) the 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) The 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 same hedging purposes with an alternate Interest Rate Swap Counterparty at any time upon delivery to the Trustee of a Rating Confirmation.

(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) the Issuer may, subject to clause (i) above, terminate the Interest Rate Swap if the Issuer has the right to do so, and (B) the 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 the 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, the Underwriter or Remarketing Agent, as applicable, shall determine the Applicable Spread for such Bonds for the duration of the applicable CPI Index Rate Period, and such Applicable Spread shall be specified in the Supplemental Indenture or 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 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 Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each CPI Index Rate so determined to the 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 the 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 CPI_{It} and CPI_{It-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 CPI_{It} and CPI_{It-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 the Issuer has given notice with respect to the Conversion of the Bonds to an Interest Rate Period other than the CPI Index Rate Period, the 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, the Issuer (or any dissemination agent appointed by the 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 the 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 the Issuer shall otherwise direct, the Bonds shall be numbered from one upward, with a separate designation for each Series.

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 the 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.

(b) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chair 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.

(d) 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.

Section 3.04. Exchange, Transfer and Registry. (a) The Bonds shall be registered and transferred only upon the books of the Issuer, which shall be held and controlled by the Bond Registrar and kept 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, the 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 the 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) The 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 the 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, the 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, the 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 the 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, the 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 the Issuer and the Trustee are complied with, and (d) expenses 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 the 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 the Issuer or any Fiduciary for the benefit of the Bondholders.

Section 3.07. Temporary Bonds. (a) Until the definitive Bonds are prepared, the Issuer may execute, in the same manner as is provided in Section 3.03, and upon the request of the 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. The 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 Preserved. 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 Regular Record Date.

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 the 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. The 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 the 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 the Issuer of such Special Record Date and, in the name and at the expense of the 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.

The 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.

The 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, the 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 the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the 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 the 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 the Issuer, at the Written Direction and expense of the Issuer, and the 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 the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(ii) The 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 the 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 Clean 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 in a Term Rate Period (including the Series 2022B-1 Bonds), the Amortized Value thereof, and

(ii) in the case of a Series of Variable Rate Bonds (including the Series 2022B-2 Bonds), 100% of the principal amount thereof,

plus, in each case, accrued and unpaid interest to the redemption date.

(b) The 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. (a) The Series 2022B-1 Bonds maturing on [] 1, 20[] [bearing interest at a rate of []%] 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:

REDEMPTION DATE	PRINCIPAL AMOUNT	REDEMPTION DATE	PRINCIPAL AMOUNT

REDEMPTION DATE	PRINCIPAL AMOUNT	REDEMPTION DATE	PRINCIPAL AMOUNT

* Stated Maturity

(b) The Series 2022B-1 Bonds maturing on [] 1, 20[] [bearing interest at a rate of []%] 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:

REDEMPTION DATE	PRINCIPAL AMOUNT	REDEMPTION DATE	PRINCIPAL AMOUNT

REDEMPTION
DATE

PRINCIPAL
AMOUNT

REDEMPTION
DATE

PRINCIPAL
AMOUNT

* Stated Maturity

(c) The Series 2022B-2 Bonds maturing on [] 1, 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:

REDEMPTION
DATE

PRINCIPAL
AMOUNT

REDEMPTION
DATE

PRINCIPAL
AMOUNT

* Stated Maturity

Section 4.03. Optional Redemption. (a) The Series 2022B-1 Bonds are subject to redemption at the option of the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and by lot within a maturity) on any date prior to []

1, 20[] at a Redemption Price, calculated by a quotation agent selected by the Issuer, equal to the greater of:

(i) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2022B-1 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 2022B-1 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 2022B-1 Bonds minus [0.25]% per annum, and

(ii) the Amortized Value thereof;

in each case plus accrued and unpaid interest to the date of redemption.

(b) The Series 2022B-1 Bonds maturing on or after the Initial Mandatory Purchase Date are subject to redemption at the option of the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and by lot within a maturity) on any date on or after [] 1, 20[] at a Redemption Price selected by the Issuer, 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 2022B-1 Bonds to be redeemed), as follows:

REDEMPTION PERIOD (BOTH DATES INCLUSIVE)	[] 1, 20[] MATURITY REDEMPTION PRICE	[] 1, 20[] MATURITY REDEMPTION PRICE	[] 1, 20[] MATURITY REDEMPTION PRICE

in each case plus accrued and unpaid interest to the date of redemption.

(c) The Series 2022B-2 Bonds 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 day on or after the first day of the third month preceding the Initial Mandatory Purchase Date for the Series 2022B-2 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. In lieu of redeeming the Series 2022B-2 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of the Issuer, use such funds as may be available by the Issuer or as are otherwise available under this Indenture to purchase such Series 2022B-2 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022B-2 Bonds. Any Series 2022B-2 Bonds so purchased may be remarketed in a new Interest Rate Period.

(d) The Issuer shall provide Written Notice of the identity of the quotation agent to the Trustee.

(e) The Series 2022B Bonds shall also be subject to redemption at the option of the Issuer, as provided in a Supplemental Indenture executed or Interest Rate Determination Certificate delivered in connection with a Conversion of the Bonds.

(f) 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.

(g) 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.

(h) For so long as a Series of Bonds is bearing interest in a 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.

(i) 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.

(j) In lieu of redeeming Series 2022B-1 Bonds pursuant to this Section 4.03, the Trustee may, upon the Written Direction of the Issuer, use such funds as may be available by the Issuer or as are otherwise available hereunder to purchase such Series 2022B-1 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022B-1 Bonds. Any Series 2022B-1 Bonds so purchased may be remarketed in a new Interest Rate Period or may be cancelled by the Trustee, in either case as set forth in the Written Direction of the Issuer.

Section 4.04. Redemption Notice. (a) When the Trustee receives Written Notice from the Issuer of its election or direction to optionally redeem Bonds pursuant to Section 4.06, the Trustee shall give notice, in the name of the Issuer, or when redemption of Bonds is authorized or required

pursuant to Section 4.01 or other than at the election or direction of the Issuer, pursuant to Section 4.07 the Trustee shall give notice, in the name of the Issuer, 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 bearing interest in a Term Rate Period, pursuant to Sections 4.02 and 4.03, not less than 30 days prior to the redemption date;
- (iii) for redemptions of Variable Rate Bonds pursuant to Sections 4.02 4.03, not less than 15 days prior to the redemption date.

A notice of redemption of the Series 2022B Bonds (A) pursuant to clause (iii) above may include a statement that, if the Series 2022B Bonds are not redeemed for any reason, the Series 2022B 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 2022B 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 the 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 Bonds.

Section 4.05. Bonds Redeemed in Part. Upon surrender of a Bond redeemed in part, the Issuer will execute and the Trustee will authenticate and deliver to the Holder thereof a new Bond or Bonds of the same Series, maturity and tenor 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 the Issuer. In the case of any redemption of Bonds at the election or direction of the Issuer, the 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 the 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. The 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 the 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 the 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, tenor and maturity shall be called for redemption, the particular Bonds or portions of Bonds of such Series, tenor and maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds of such Series, tenor and maturity 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 and, in the case of optional redemption of Bonds, sufficient moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on such Bonds being held by the Trustee, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the applicable Redemption Price, 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. If there shall be drawn for redemption less than all of a Bond, the 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 Series, maturity and tenor 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 the Bonds or portions thereof 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 the 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 the 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 2022B 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) the Issuer shall be deposited in the Issuer Purchase Account in accordance with the provisions of Section 4.15(d)(ii). Moneys provided by the Issuer not required to be used in connection with the purchase of tendered Bonds shall be returned to the Issuer in accordance with Section 4.15(d) and Section 4.15(e).

(iii) Moneys in the 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. The 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) The 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 the Issuer Purchase Account for the applicable Series of Bonds.

(iii) The Trustee shall hold all proceeds received from the Remarketing Agent or the 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 the Issuer and will not be subject to the control of the 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 the Issuer Purchase Account for the Bonds of the applicable Series.

Any moneys held by the Trustee in the 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 the Issuer, upon a request in a Written Direction of the 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 the 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 the Issuer Purchase Account shall be delivered on the day of such purchase by the Trustee to or as directed by the Issuer. The Trustee shall register such Bonds in the name of the Issuer or as otherwise directed by the 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 thirty (30) days prior to the applicable Mandatory Purchase Date, and the Trustee shall give a conditional notice of extraordinary redemption pursuant to Section 4.04 no later than the applicable deadlines set forth in that section 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, the Issuer shall direct the Trustee to send such conditional redemption notice pursuant to a Written Direction in the form attached hereto as *Exhibit C*, 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 C*.

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, the 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. Remarketing 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 the Issuer or a Project Participant, or to any Person who controls, is controlled by, or is under common control with the 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 the 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 Financial Industry Regulatory Authority or subject to supervision by the Office of the Comptroller of the Currency, 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 the Issuer. A Remarketing Agent may be removed at the direction of the Issuer at any time on 30 days' prior written notice, in a Written Direction of the Issuer, filed with such Remarketing Agent for the related Series of Bonds and the Trustee. No such resignation or removal shall be effective until a successor has been appointed and has accepted such duties.

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), the 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 the Issuer shall not have appointed its successor, the 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 the 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 (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 the 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 the Clean 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:

- (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,
- (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.

(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. The Issuer may, by Supplemental Indenture, with

the prior written approval of the Trustee, establish one or more additional accounts or subaccounts. By Supplemental Indenture, the 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 Power 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 the Issuer, and there may be paid into the Project Fund, at the option of the Issuer, any moneys received for or in connection with the Clean Energy Project by the 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 the 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 the Project Fund shall be applied by the Issuer to pay the Cost of Acquisition and any capitalized interest on the Series 2022B Bonds.

(b) Before any payment is made by the Trustee from the Project Fund, the Issuer shall file with the Trustee a Written Request of the 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 the 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 from the applicable Account in accordance with and subject to the applicable terms of this Section 5.03.

(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 the 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, as identified in a written notice from the Issuer to the Trustee, 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 Power Supply Contract, the Trustee shall perform the following actions on behalf of the Issuer under Section 2.1 of the Receivables Purchase Provisions: (i) provide a preliminary notice by email to the 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. 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 Power 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, the 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) [Reserved];

(iv) amounts representing the Project Administration Fee, together with any amounts paid by the Project Participants under a Prepaid Clean Energy Project

Administration Agreement, 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) [Reserved.];

(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 necessary for the payment of Operating Expenses coming due for such 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 an amount equal to the cumulative unpaid Scheduled Debt Service Deposits due through such date 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 Put Receivables and the payment of interest on all Put 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 the Issuer of such deficiency and the Trustee shall (i) if the Issuer has not previously done so, cause the Issuer to suspend all deliveries of all quantities of Energy under a Power 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 the Issuer to the Trustee that the 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 the Issuer in a Written Request delivered not less than thirty (30) days before the due date of such Sinking Fund Installment, be applied by the Trustee to (i) the purchase of Bonds of the Series, maturity and tenor 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 and redemptions 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 the 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 (30th) 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 the Series, maturity and tenor 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 the 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, as applicable, 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, as applicable. All expenses in connection with the purchase or redemption of Bonds shall be paid by the Issuer in such manner as the 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 pursuant to this Section 5.07, 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 the 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 and redemptions 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 and redemptions shall be made in such manner as the 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 from the proceeds thereof shall be set aside and applied to the payment of interest on such Series of Bonds and related Interest Rate Swap Payments.

(f) In the event of the refunding or defeasance of any Bonds, the Trustee shall, if directed by the 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, the 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, the Issuer shall direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of the 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 owned by the Energy Supplier, and third, upon Written Direction of the 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) 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 the 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 Power 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 the Issuer determines shall be required for such purposes; and
- (v) any other lawful purpose of the 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.

(c) If at any time Bonds of any Series, maturity and tenor 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 the 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), the 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 thirty (30) 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, and within such Remediation Account the subaccount applicable to each Project Participant, the amounts, as directed in a Written Direction of the 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 applicable subaccount of the Remediation Account upon such remarketing and applied pursuant to a Written Direction of the 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 applicable subaccount 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 applicable subaccount 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 the 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 applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund specified in writing by the 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 the 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 applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund at the time of the remarketing.

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 the 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 the 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 the Issuer may determine.

Section 5.14. Administrative Fee Fund. All Project Administration Fees, together with any amounts paid by the Project Participants pursuant to a Prepaid Clean Energy Project Administration Agreement, shall be deposited by the Trustee into the Administrative Fee Fund. The Trustee shall apply amounts on deposit in the Administrative Fee Fund to pay Operating Expenses promptly upon receipt of a Written Request of the Issuer directing such payment. In the event amounts on deposit in the Administrative Fee Fund are insufficient to make any payments directed in the Written Request of the Issuer, the Trustee shall promptly notify each Project Participant, at its respective address shown on Schedule I attached hereto, of the fact and amount of such deficiency.

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 Depositories 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 the Issuer in writing, *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 the Issuer in writing 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, the 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, the 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, the 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 the 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, the 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 the 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 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 the 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 the 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 the 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 the Issuer and may rely on such investment directions without verifying the suitability or legality of such investment and any deposit or investment directed by the Issuer shall constitute a certification by the 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, the 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 the Issuer. The Trustee shall be entitled to rely in good faith on any Written Direction of the Issuer as to the suitability and legality of the directed investment and any deposit or investment directed by the Issuer shall constitute a certification by the 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, the 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 Energy Remarketing Reserve Fund, (iv) and the Administrative Fee 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 the 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 the Issuer to the Trustee as of each Principal Installment payment date and at such other times as the 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 the 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 the Issuer, the Issuer or the Trustee at the Written Direction of the 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 the Issuer to the Trustee as necessary to provide sufficient moneys for such payment or transfer. The Issuer acknowledges that, to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grants the Issuer the right to receive from the Trustee brokerage confirmations of security transactions as they occur, the Issuer specifically waives receipt of such confirmations to the extent permitted by law. 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 THE ISSUER

The Issuer covenants and agrees with the Trustee and the Bondholders as follows:

Section 7.01. Payment of Bonds. The 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. The 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, the 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 the Issuer in respect of the Bonds or of this Indenture, and the Trustee shall continuously maintain or make arrangements to provide such services. The Issuer shall maintain one or more offices or agencies where notices, demands and other documents may be served upon the Issuer in respect of the Bonds or this Indenture, and the Issuer shall continuously maintain or make arrangements to provide such services.

Section 7.04. Further Assurance. At any and all times the 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 the Issuer may become bound to pledge.

Section 7.05. Power To Issue Bonds and Pledge the Trust Estate. The 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 the 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 the Issuer in accordance with their terms and the terms of this Indenture. The 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. The 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 of Energy or otherwise with respect to the Clean Energy Project, subject to the terms of the Power 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 bonds, 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. [Reserved].

Section 7.09. Limitations on Operating Expenses and Other Costs. The 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 Power Supply Contracts. The 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 Power Supply Contract that will impair the ability of the 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 the 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 other than any such amounts which the Issuer anticipates shall be transferred from other Funds or Accounts;

(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) the Issuer may take any other action under or in connection with the Power Supply Contracts that is expressly permitted pursuant to the provisions thereof;

(ii) the Issuer and a Project Participant may amend a Power Supply Contract to change any Delivery Point (as defined and provided therein);

(iii) a Power 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 the 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) the Issuer may agree to an assignment or novation of all or a portion of a Project Participant's rights and obligations under a Power Supply Contract upon (A) compliance with the restrictions on assignment set forth in such Power Supply Contract, and (B) receipt of a Rating Confirmation with respect to such assignment or novation; and

(v) a Power 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. Power Supply Contracts; Energy Remarketing. (a) The Issuer shall cause all Revenues payable by the Project Participants under the Power 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). The Issuer shall 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 duly perform its covenants and agreements thereunder.

(b) In the event that any Project Participant fails to pay when due any amounts owed to the Issuer under a Power Supply Contract, the 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 Power Supply Contract) in respect of any Reset Period, then the 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 Power Supply Contracts with the Project Participants set forth on Schedule I shall be the only Power 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 a Power Supply Contract in compliance with this Section 7.11, the Issuer may sell the quantities of Energy to be delivered under the Energy Purchase Agreement only pursuant to the Power Supply Contracts. A copy of each Power Supply Contract and any amendment to a Power Supply Contract, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.12. Energy Purchase Agreement; Energy Supplier Guaranty. (a) The Issuer shall enforce the provisions of the Energy Purchase Agreement and duly perform its covenants and agreements thereunder and shall enforce the provisions of the Energy Supplier Guaranty.

(b) The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Energy Purchase Agreement. The 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) The 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 the 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. The Issuer shall cause all Commodity Swap Receipts and any other amounts payable to the Issuer pursuant to the Commodity Swap to be collected and paid directly to the Trustee for deposit into the Revenue Fund. The Issuer shall enforce the provisions of the Commodity Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Commodity Swap Counterparty under the Commodity Swap. The 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 the Issuer to comply during the current or any future year with the provisions hereof. The 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. The Issuer shall cause all Interest Rate Swap Receipts or other amounts payable to the Issuer pursuant to the Interest Rate Swap to be collected and paid to the Trustee for deposit into the Debt Service Account. The Issuer shall enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify the 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. The 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 the Issuer to comply during the current or any future year with the provisions hereof. The 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) The Issuer shall keep or cause to be kept with respect to the Clean 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 the Clean 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 Power 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 the Issuer relating to the Clean 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 the 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) The Issuer shall file with the Trustee (i) forthwith upon becoming aware of any Event of Default or default in the performance by the Issuer of any covenant, agreement or condition contained in this Indenture, a Written Certificate of the 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 the Issuer signed by an appropriate Authorized Officer stating whether, to the best of such Authorized Officer's knowledge and belief, the 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 the 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), subject to such reasonable regulations as the Trustee may from time to time determine to be advisable or required by law, and shall be mailed to each Bondholder who shall file a written request therefor with the Issuer. The 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. The 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 the Issuer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of the 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 the Issuer shall in good faith contest by proper legal proceedings if the Issuer shall in all such cases have set aside on its books reserves deemed adequate by the Issuer with respect thereto.

Section 7.18. Tax Covenants. (a) The 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, the 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. The 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 the 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, the 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 the 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, the 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 the 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 the 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) The 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 the Issuer under the provisions of the Act and this Indenture.

(b) The 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 Power Supply Contracts), or reorganize, reincorporate or reconstitute into or as, another entity unless, (i) prior to such event, the 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 the Issuer under the Commodity Swap and the Interest Rate Swap.

(c) The 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 the Issuer, shall comply in all respects with the applicable laws of the State.

Section 7.20. Bankruptcy. To the extent permitted by law, the 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 the Issuer. This covenant shall survive the termination of this Indenture.

Section 7.21. [Reserved].

Section 7.22. Replacement of Energy Supplier Guaranty. The 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. The 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 the 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 the Issuer by the Trustee or to the 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) the 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) the Issuer is unable to meet its debts with respect to the Clean 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 the Clean 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 the Clean 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 the Clean 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 the 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) the Issuer is unable to meet its debts with respect to the Clean 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 the Clean Energy Project, or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Clean 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 the Issuer and its affairs or a decree or order finding or determining that the Issuer is unable to meet its debts with respect to the Clean 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) The Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of the Issuer and all other records relating to the Clean 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) The Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the Issuer, upon demand of the Trustee, will account, as if it were the trustee of an express trust, for all Revenues and other moneys, securities and funds pledged or held under this Indenture for such period as shall be stated in such demand.

Section 8.03. Enforcement of Agreements; Application of Moneys after Default. (a) The Issuer covenants that, if an Event of Default shall have occurred and be continuing, 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 Power 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 the Issuer under the Power 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, to secure its obligations under this Indenture, the Issuer hereby irrevocably pledges and collaterally assigns to the Trustee the Issuer's rights to issue notices (including notices to direct the remarketing of Energy) and to take any other actions that the Issuer is required or permitted to take under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap, and, while an Event of Default has occurred and is continuing under this Indenture, the Trustee is hereby authorized and directed, and shall have the authority, to take any such actions as it deems necessary under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap. Notwithstanding this authorization, the Issuer shall retain, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights which it has pledged and collaterally assigned to the Trustee in accordance with the foregoing; provided, however, if an Event of Default has occurred and is continuing, the Trustee shall have the right to notify the 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 Power Supply Contracts, and the Commodity Swap Counterparty under the Commodity Swap, subject to the rights of the Energy Supplier with respect to the Power 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 Event of Default has been cured pursuant to the terms of this Indenture or the Trustee issues a subsequent notice otherwise. For the avoidance of doubt, the Energy Purchase Agreement, the Power 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 provision of opinions or other process hereunder.

(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, (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), and (4) moneys held in the Administrative Fee Fund shall not be used other than as specified in Section 5.14.

(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 the 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 the 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 the 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 the Issuer and the Trustee shall be restored, respectively, to their former positions and rights under this Indenture. No such payment over to the Issuer by the Trustee nor restoration of the 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 the Clean 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 the Issuer as if the 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 the 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 the 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) The 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 the 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 the 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 the 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, including bond proceeds, paid by such Fiduciary in accordance with the provisions of this Indenture to the 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, the 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, including the costs and expenses of defending itself against any claim or liability in connection with the exercise 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 primarily 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) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in connection with the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(d) Notwithstanding anything to the contrary herein, the 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 may conclusively rely upon 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 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 and in conformity with the formal requirements of this Indenture. Each Fiduciary may consult with a consultant, accountant or counsel, who may or may not be a consultant, accountant or counsel to the 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 the 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 the Issuer shall provide to the Trustee a Written Certificate of the Issuer listing Authorized Officers with the authority to provide such directions and containing specimen signatures of such Authorized Officers, which Written Certificate of the Issuer shall be amended whenever a person is to be added or deleted from the listing. If the 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. The 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 the Issuer provided to the Trustee have been sent by such Authorized Officer. The 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. The 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. The 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 the Issuer and the Fiduciary. Subject to the provisions of Section 9.03, the 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 the 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 the 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 the 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 the 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 30 days' prior Written Notice, with or without cause, by delivery of a Written Certificate of the 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 the 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 30 days after the Trustee shall have given to the Issuer written notice as provided in Section 9.07 or within 30 days 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 the 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 the Issuer or of the successor Trustee, at the cost and expense of the 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 the 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 the 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 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 the 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 the 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 the 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. In the absence of bad faith on its part, 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, facsimile 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 the 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. In no event shall the Trustee be liable for incidental, special, consequential or punitive damages or penalties (including, but not limited to, lost profits).

(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 the 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) The Trustee shall not be responsible for any recital in this Indenture or on the Bonds (except with respect to the certificate of the Trustee endorsed on the Bonds) or for insuring any property conveyed or collecting any insurance monies, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto, or instruments of further assurance, or for the sufficiency of the security for the Bonds, or for the investment of monies as herein permitted (except that no investment shall be made except in compliance with Section 6.02 and Section 6.03 hereof), or for the recording or re-recording, filing or re-filing of this Indenture, or any supplement

or amendment thereto, or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof. Except as specifically provided in this Indenture, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer, but the Trustee may require of the Issuer full information and advice as to the performance of such covenants. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers. 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 the 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, the 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.

(h) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Bonds.

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.

Section 9.17. Notice of Lien Filings. Notwithstanding anything to the contrary contained in this Indenture, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, if applicable. In addition, unless the Trustee shall have received Written Notice from the Issuer that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected (i) in relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 9.17 and (ii) in filing any continuation statements in the same filing offices as the initial filings were made. If applicable, the Trustee shall, upon the prior Written Direction of the Issuer, cause to be filed, in accordance with such instructions, a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, for which the Issuer has directed a

continuation statement to be filed, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered with such Written Direction of the Issuer to the Trustee. The Issuer shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including payment of any filing fees, and shall give the Trustee any assistance it reasonably requests in order to enable the Trustee to file continuation statements for the lien established by this Indenture.

ARTICLE X

SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders. The 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 the Issuer in this Indenture, other covenants and agreements to be observed by the 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 the 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 the 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 the 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 the 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 the 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 the 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 is authorized or permitted by this Indenture, and is valid and binding upon the Issuer; provided, that such Opinion of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, 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 the Issuer to remove the Trustee as provided in Section 9.08 herein.

(e) Notwithstanding anything in this Article X to the contrary, 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, or (v) the provisions of Section 5.04(b) regarding the sale by the Trustee of Put 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 the 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 the 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 have become 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 the 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. The 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 the 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 the Issuer in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon the Issuer; *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, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial

discretion, limitations on legal remedies against public entities in the State, 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. 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 the 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 the 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 the 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 the 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 the 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 the 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 the 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, the 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 the 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 the 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 the Issuer or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the 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 the 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 to the Interest Rate Swap Counterparty under the Interest Rate Swap, then the pledge of all covenants, agreements and other obligations of the 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) the 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 the Issuer to be prepared and filed with the Issuer and, upon the request of the Issuer, shall execute and deliver to the Issuer all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to the 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 the 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 the 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 the 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, the 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 the Issuer or purchased or otherwise acquired by the 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, the 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 the Issuer or purchased or otherwise acquired by the 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 the 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, the 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 the 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 the 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 the Issuer, pay the amount of such excess to the 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 the 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 the 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, the 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 (or, if shorter, one Business Day before such moneys would escheat to the State under then applicable State law) 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 the Issuer, be repaid by the Fiduciary to the 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 the Issuer for the payment of such Bonds; *provided, however*, that before being required to make any such payment to the Issuer the Fiduciary shall, at the expense of the 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 the 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 instrument appointing 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 the 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 be retained in its possession and shall at all times during regular business hours (upon reasonable prior written notice) be subject to the inspection of the 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 pledge of 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 the Issuer, the Fiduciaries, the Holders of the Bonds, 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 the Issuer shall be for the sole and exclusive benefit of the Issuer, the Fiduciaries, the Holders of the Bonds and the Interest Rate Swap Counterparty.

Section 12.06. No Recourse on the Bonds; Non-Liability of the Issuer. 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 the Issuer, the Project Participants or any Person executing the Bonds. The Issuer shall not be obligated to pay the principal or Redemption Price or Purchase Price of or interest on the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments, except from the Trust Estate as provided in this Indenture. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the Issuer, is pledged to the payment of the principal or Redemption Price of or interest on the Bonds, the Interest Rate Swap Payments or Commodity Swap Payments. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Bonds, this Indenture, the Interest Rate Swap or the Commodity Swap except only to the extent of the Trust Estate as provided in this Indenture.

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 the 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 the 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. (a) 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 the Issuer: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, California 94901
Attention: Treasurer/Controller
Telephone: (415) 464-6037
Email: [SeriesB]@CCCFA.org

With a copy to:

Silicon Valley Clean Energy Authority
333 W. El Camino Real Suite 330
Sunnyvale, California 94087
Attention: Girish Balachandran, CEO
Telephone: (408) 721-5301
Email: girish@svcleanenergy.org

If to the Trustee, Paying Agent, the Bond Registrar, the Custodian or the Calculation Agent for the Index Rate Bonds: The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256
Telephone: (904) 645-1923
Attention: Richard Dillard
Email: Richard.Dillard@bnymellon.com

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 the Issuer and the Trustee.

(b) The Issuer may, by Written Direction to the Trustee, permit a Project Participant that is a Member to deliver to the Trustee on behalf of the Issuer any notices, requests, demands and other communications required or permitted to be delivered by the Issuer under this Indenture. Such Written Direction shall contain a certificate identifying the Authorized Officers of such Project Participant for purposes of delivery of notices under this Indenture. The Trustee shall treat all such notices received from the Project Participant as if they were delivered by the Issuer, unless

an Event of Default has occurred and is continuing under this Indenture, in which case any notices from such Project Participant shall be disregarded by the Trustee and of no force or effect. The Issuer may at any time rescind and annul the Written Direction permitting such Project Participant to deliver notices hereunder on behalf of the Issuer by delivering a Written Direction to the Trustee stating that such permission has been rescinded and annulled.

Section 12.11. Notices to Rating Agencies. The Issuer shall provide to each Rating Agency rating the Bonds at the time notice of any amendment to this Indenture, the Energy Purchase Agreement, any Commodity Swap, any Power Supply Contract, and Debt Service Fund Agreement or any other document relating to the Bonds or the Clean Energy Project.

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.

Section 12.13. Waiver of Jury Trial. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS INDENTURE OR ANY OTHER TRANSACTION DOCUMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR THE RELATIONSHIP ESTABLISHED HEREUNDER OR THEREUNDER, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 12.14. Electronic Signatures. Each of the parties hereto agrees that the transaction consisting of this agreement may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this agreement using an electronic signature, it is signing, adopting, and accepting this agreement and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this agreement in a usable format.

[Signature page follows]

Ballard Spahr draft 9/30/22

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, The Bank of New York Mellon Trust Company, N.A., 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: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By: _____
Name: _____
Title: _____

[SEAL]

ATTEST:

Attesting Party

Ballard Spahr draft 9/30/22

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 the 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. _____

REGISTERED
\$ _____

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BOND
SERIES 2022[B-1 (GREEN BONDS) (TERM RATE)][B-2 (GREEN BONDS)
([SIFMA/SOFR] INDEX RATE)]**

			[INTEREST RATE][APPLICABLE SPREAD [AND APPLICABLE FACTOR]]	INTEREST RATE MODE
MATURITY DATE	DATED DATE	CUSIP		
	_____, 2022			

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

California Community Choice Financing Authority (the “*Issuer*”), a joint powers authority, organized and existing pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the “*Act*”), and the Joint Powers Agreement, dated June 25, 2021, as amended from time to time, for value received, hereby promises to pay in lawful money of the United States of America, to the Registered Owner identified above, or registered assigns, on the Maturity Date stated above, unless this Bond shall have been called for redemption (in whole or in part) 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 determined as provided in the Indenture identified below, until payment in full of such principal amount. The initial Interest Rate Period, as defined in the Indenture, for this Bond is set out in the

Indenture. The Interest Rate Period for this Bond may be changed from time to time as provided in the Indenture.

The following paragraph shall be inserted in the Series 2022B-1 Bonds:

This Bond bears interest from the Dated 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 [], [2023].

The following paragraph shall be inserted [in the Series 2022B-2 Bonds and] for any SIFMA Index Rate 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 Dated 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 [in the Series 2022B-2 Bonds and] for any SOFR Index Rate Bonds, and the phrase “SOFR Index Rate” shall be inserted under the caption “Interest Rate” immediately below the title of such Bond:

This Bond bears interest from the Dated Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a SOFR Index Rate equal to the sum of (a) the product of the Applicable Factor of []% of SOFR 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 Dated 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 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, Redemption Price of, and interest on this Bond solely from the Trust Estate as defined in and in accordance with the provisions of the Trust Indenture, dated as of [] 1, 2022, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (said trustee and any successor thereto under the Indenture being herein referred to as the “*Trustee*”), as the same may be amended and supplemented from time to time (the “*Indenture*”).

This Bond is one of the Clean Energy Project Revenue Bonds of the Issuer initially issued in [two] separate series (collectively, the “*Bonds*”) under and by virtue of the Act and under and pursuant to the Indenture for the purpose of providing funds to pay the Cost of Acquisition of the Issuer’s Clean 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 “Clean Energy Project Revenue Bonds, Series 2022[B-1 (Green Bonds) (Term Rate)][B-2 (Green Bonds) ([SIFMA/SOFR] Index Rate)],” dated as of the Dated Date identified above. 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.

All Bonds are and will be equally and ratably secured by the pledge and covenants made in the Indenture, except as otherwise expressly provided or permitted in or pursuant to the Indenture.

THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER AND THE PRINCIPAL AND REDEMPTION PRICE OF, AND INTEREST ON, THIS BOND ARE PAYABLE SOLELY FROM THE TRUST ESTATE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE ISSUER, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR UNDER THE INDENTURE. THE ISSUER SHALL NOT BE OBLIGATED TO PAY THE PRINCIPAL OR THE REDEMPTION PRICE OF OR INTEREST ON THE BONDS EXCEPT FROM THE FUNDS PROVIDED THEREFOR UNDER THE INDENTURE AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE OF CALIFORNIA 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.

Copies of the Indenture are on file at the office of the office of Trustee in Jacksonville, Florida, 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 are issued, and a statement of the rights, duties, immunities and obligations of the Issuer and of the Trustee. Such pledge and other obligations of the 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.

The Issuer has established a book-entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, the Securities Depository will be the registered owner of this Bond. By acceptance of a confirmation of purchase, delivery or transfer, a Beneficial Owner shall be deemed to have agreed to this arrangement. The Securities Depository, as registered owner of this Bond, shall be treated as the Owner of it for all purposes.

The Issuer will pay the principal or Redemption Price of and interest on this Bond solely from the Trust Estate in accordance with the provisions of the Indenture. Interest will accrue on the unpaid portion of the principal of this Bond from the last Interest Payment Date for which interest has been paid or duly provided for or if no interest has been paid or duly provided for, from the Dated Date of this Bond, 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.

This Bond may be transferred or exchanged as provided in the Indenture.

To the extent and in the respects permitted by the Indenture, the Indenture may be modified or amended in the manner and subject to the conditions and exceptions prescribed in the Indenture. Certain such modifications and amendments may be made without the consent of the Owners of the Bonds to the extent provided in the Indenture.

The Owner 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.

The Bonds are subject to tender or redemption 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.

No director, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of any principal or Redemption Price of or interest on the Bonds or any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of 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 in due time, form and manner, and that the issue of Bonds, together with all other indebtedness of the 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 Chair, and attested by the manual or facsimile signature of its Secretary, all as of the Dated Date specified above.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By: _____
Chair

ATTEST:

Secretary

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION AND
REGISTRATION]**

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the Clean Energy Project Revenue Bonds, Series 2022[B-1 (Green Bonds) (Term Rate)][B-2 (Green Bonds) (SIFA Index Rate)], of California Community Choice Financing Authority.

Date of registration and authentication: _____, 20[___].

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., 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:

TEN COM	—	as tenants in common	UNIF TRAN MIN ACT
TEN ENT	—	as tenants by the entirety	_____ Custodian _____
JT TEN	—	as joint tenants with right	(Cust) (Minor)

of survivorship and not as under Uniform Transfers to Minors Act of
tenants in common _____
(State)

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.

Ballard Spahr draft 9/30/22

EXHIBIT B

FORM OF INDEX RATE DETERMINATION CERTIFICATE

Re: California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022B-2 (Green Bonds) ([SIFMA/SOFR] Index Rate) (the “Bonds”)

Reference is made to Section 2.09 [and Section 2.14] of the Trust Indenture, dated as of [_____] 1, 2022 (the “Indenture”), between the California Community Choice Financing Authority (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A., 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 the 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 [SIFMA/SOFR] Index Rate and the Index Rate Period shall be _____;

(ii) if the Index Rate shall be the SOFR Index Rate, (A) the SOFR Index shall be the “Secured Overnight Financing Rate” reported on the NY Federal Reserve’s Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing the SOFR Index as of the third Business Day preceding the [Initial Issue Date][Index Rate Reset Date], which will be used to calculate interest for the SOFR Effective Period beginning on such [Initial Issue Date][Index Rate Reset Date] (the “SOFR Effective Date”) (for example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, _____, 20__, the Calculation Agent uses SOFR published on the SOFR Publish Date of Tuesday, _____, 20__, which is the SOFR Index for the SOFR Lookback Date of Monday, _____, 20__), and (B) the Applicable Factor, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be % of SOFR.

(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:

MATURITY DATE	APPLICABLE SPREAD	MATURITY DATE	APPLICABLE SPREAD

(iv) if, during any [SIFMA/SOFR] Index Rate Period, the [SIFMA/SOFR] 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 the Issuer, for the Index Rate Period shall be the substitute determined in writing by the Issuer;

(v) the Index Rate Tender Date shall be _____;

(vi) the Interest Payment Date[s] shall be _____;

(vii) for a Series of Bonds bearing interest at the SIFMA Index Rate, the Index Rate Reset Date[s] 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]; and

(viii) for a Series of Bonds bearing interest at the SOFR Index Rate, the SOFR Effective Date shall be each Business Day.

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:

MATURITY DATE	APPLICABLE SPREAD	MATURITY DATE	APPLICABLE SPREAD

(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 (i) the total of CPI for the applicable Reference Month less CPI for the twelfth month prior to the applicable Reference Month, divided by (ii) CPI for the twelfth month prior to the applicable Reference Month, which formula would be expressed mathematically as $((CPI_t - CPI_{t-12}) / CPI_{t-12})$, where:

CPI_t = CPI for the applicable Reference Month;

CPI_{t-12} = CPI for the twelfth month prior to the applicable Reference Month;

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:

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By: _____
Name _____
Title _____

ACKNOWLEDGED, RECEIVED AND AGREED TO:

as Underwriter

By: _____
Name _____
Title _____

EXHIBIT C

Form of Redemption Notice

[TO COME]

SCHEDULE I

INITIAL PROJECT PARTICIPANT

Silicon Valley Clean Energy Authority
Notice Address:
333 W. El Camino Real Suite 330
Sunnyvale, California 94087

Ballard Spahr draft 9/30/22

SCHEDULE II

SCHEDULED DEBT SERVICE DEPOSITS

DATE	SCHEDULED MONTHLY DEPOSIT	MINIMUM INTEREST EARNINGS ACCRUAL⁽¹⁾	CUMULATIVE SCHEDULED BALANCE

DATE	SCHEDULED MONTHLY DEPOSIT	MINIMUM INTEREST EARNINGS ACCRUAL ⁽¹⁾	CUMULATIVE SCHEDULED BALANCE

DATE	SCHEDULED MONTHLY DEPOSIT	MINIMUM INTEREST EARNINGS ACCRUAL ⁽¹⁾	CUMULATIVE SCHEDULED BALANCE

(1) 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 [_____] 20[23] and ending with [_____] 20[___], the 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.

The Issuer will then calculate a net settlement amount for all Primary Delivery Points for such Month due by or to the Issuer under the Commodity Swap that aggregates the amounts determined under clause (iii) above.

All payments from the Issuer or the Commodity Swap Counterparty will be due on each “Payment Date” under the Commodity Swap (which shall be the twenty-fifth (25th) 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).

Ballard Spahr draft 9/30/22

SCHEDULE IV

**AMORTIZED VALUE OF
SERIES 2022B-1 BONDS**

DATE	AMORTIZED VALUE	DATE	AMORTIZED VALUE

DATE	AMORTIZED VALUE	DATE	AMORTIZED VALUE

SM Draft 23 September 2022

RE-PRICING AGREEMENT

This RE-PRICING AGREEMENT, dated as of [____], 2022 (this “Agreement”), is entered into by and between Morgan Stanley Energy Structuring, L.L.C. (“MSES”) and California Community Choice Financing Authority (“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 2022B] 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 the Power Supply Contract with the Project Participant providing for the sale of the Energy Supply by Issuer to the Project Participant; and

WHEREAS, the price payable by the Project Participant 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, the 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 Contract 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 Price” means \$[]/MWh.

“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 [] and ending on [].

“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.

“Mandatory Purchase Date” has the meaning set forth in the Indenture.

“Minimum Discount” has the meaning set forth in the Power Supply Contract.

“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 Guarantee” 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 the Project Participant under the Power Supply Contract.

“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 [____], 2022, 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 the 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 2022B] 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 Guarantee. The Morgan Stanley Guarantee 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 Guarantee. Unless the Morgan Stanley Guarantee is terminated, the Morgan Stanley Guarantee 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 Participant. Issuer shall notify the Project Participant of the Estimated Available Discount and any updates thereto under the relevant provisions of the Power Supply Contract. Unless MSES and Issuer otherwise agree, in any notice of Estimated Available Discount provided to a Project Participant prior to the Participant Notification Deadline 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 Notice (as defined in the Power Supply Contract).

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 Contract) for such Reset Period, which shall be determined consistent with Section 3.2(c) of the Power Supply Contract 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 Guarantee 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 Guarantee as set forth in the Morgan Stanley Guarantee, 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 Guarantee.

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 [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], 18.12 [Limitation of Liability] and 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 Contract and Indenture.* Issuer shall not agree to or consent to any modification, supplement, amendment or waiver of any provision of the Power Supply Contract 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: _____

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

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”.

- “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 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 Contract) for the Reset Period, which shall be determined consistent with Section 3.2 of the Power Supply Contract 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 [_____] , 2022

NEW ISSUE - BOOK-ENTRY ONLY

RATING: (SEE “RATING” HEREIN)

In the opinion of Ballard Spahr 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]/[KESTREL LOGO]	\$ _____* CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS		
	\$ _____ SERIES 2022[B]-1 (GREEN BONDS) (TERM RATE)	\$ _____ SERIES 2022[B]-2 (GREEN BONDS) (SIFMA INDEX RATE)	\$ _____ SERIES 2022[B]-3 (GREEN BONDS) (SOFR INDEX RATE)

DATED: Date of Delivery

DUE: As shown on the inside cover

California Community Choice Financing Authority (“CCCFA”) is issuing its Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Green Bonds) (Term Rate) (the “Series 2022[B]-1 Bonds”), its Clean Energy Project Revenue Bonds, Series 2022[B]-2 (Green Bonds) (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”) and its Clean Energy Project Revenue Bonds, Series 2022[B]-3 (Green Bonds) (SOFR Index Rate) (the “Series 2022[B]-3 Bonds” and, together with the Series 2022[B]-1 Bonds and Series 2022[B]-2, the “Bonds”), under a Trust Indenture between CCCFA and The Bank of New York Mellon Trust Company, N.A., as Trustee. The Bonds will be issued in book-entry form through the facilities of The Depository Trust Company (“DTC”). 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 of, premium, if any, and interest on the Bonds will be made directly to DTC and will subsequently be disbursed to DTC participants and thereafter 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 [_____] , 202[]* (the “Initial Interest Rate Period”), the Series 2022[B]-1 Bonds will bear interest in a Term Rate Period, the Series 2022[B]-2 Bonds will bear interest in a SIFMA Index Rate Period and the Series 2022[B]-3 Bonds will bear interest in a SOFR Index Rate Period, as shown on the inside cover page and described herein. During the Initial Interest Rate Period, interest on the Series 2022[B]-1 Bonds is payable semiannually on each [_____] 1 and [_____] 1, commencing [_____] , 202[]* and interest on the Series 2022[B]-2 Bonds and the Series 2022[B]-3 Bonds is payable on the first Business Day of each month, commencing on the first Business Day of [_____] 202[]*. 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, 205[] are subject to mandatory tender for purchase on [_____] , 202[]* (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 the Project Participant (hereinafter defined) can contract for and purchase in compliance with 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”), make certain payments for any Prepaid Energy not delivered, remarket quantities of Base Energy (defined herein) in respect of Prepaid Energy not taken by the Project Participant and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment (defined herein) 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, and the Interest Rate Swap 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 Silicon Valley Clean Energy Authority (“SVCE” or the “Project Participant”) under a Power Supply Contract (the “Power Supply Contract”) between CCCFA and the Project Participant. Under the terms of the Prepaid Energy Sales Agreement and the Power Supply Contract, the Project Participant may assign its rights to the delivery of EPS Compliant Energy under existing and future power purchase agreements to MSES or to Morgan Stanley Capital Group, Inc. (“MSCG”) for ultimate delivery of such EPS Compliant Energy from such agreements to the Project Participant. The Project Participant has entered into a limited assignment agreement relating to specific power purchase agreement(s) as of the Date of Delivery.

The Bonds have been designated “Green Bonds”. See “DESIGNATION OF BONDS AS GREEN BONDS” and Second Party Opinion by Kestrel Verifiers set forth herein.

THE PAYMENT OF THE BONDS IS NOT GUARANTEED BY THE ENERGY SUPPLIER, MSCG, MORGAN STANLEY, THE UNDERWRITER, THE COMMODITY SWAP COUNTERPARTY, THE INVESTMENT AGREEMENT PROVIDER, CCCFA OR ITS MEMBERS, OR THE PROJECT PARTICIPANT. THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS OF CCCFA, THE PROJECT PARTICIPANT, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION

* Preliminary, subject to change.

OF THE STATE AND NEITHER THE FAITH AND CREDIT OF CCCFA NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO PAYMENTS PURSUANT TO THE INDENTURE OR THE BONDS. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE.

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.

The Bonds are offered, when, as and if issued by CCCFA and accepted by the Underwriter, subject to the approval of validity by Ballard Spahr LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CCCFA by its General Counsel, for the Project Participant 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 [_____], 2022.

Morgan Stanley

This Official Statement is dated _____, 2022.

\$ _____ *

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS

MATURITY DATES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NUMBERS¹

\$ _____ **SERIES 2022[B]-1 BONDS**
(TERM RATE)

\$ _____ **SERIAL BONDS**

MATURITY DATE	PRINCIPAL AMOUNT	INTEREST RATE	YIELD	CUSIP

\$ _____ % Term Bond due [_____] 1, 205[_____] ², Yield: _____ %, CUSIP _____

\$ _____ **SERIES 2022[B]-2 BONDS**
(SIFMA INDEX RATE)

MATURITY DATE	INDEX	APPLICABLE SPREAD³	CUSIP
[_____] 1, 205[_____] ²	SIFMA Index	___ basis points	_____

\$ _____ **SERIES 2022[B]-3 BONDS**
(SOFR INDEX RATE)

MATURITY DATE	APPLICABLE FACTOR⁴	INDEX	APPLICABLE SPREAD³	CUSIP
[_____] 1, 205[_____] ²		SOFR Index		

* Preliminary; subject to change.

¹ CUSIP® is a registered trademark of the American Bankers Association. The CUSIP numbers listed above have been provided by CUSIP Global Services, managed on behalf of the American Bankers Association by FactSet Research Systems Inc., 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.

² The Bonds of each Series maturing on [_____] 1, 205[_____] are required to be tendered for purchase on [_____] 202[_____] ³.

³ Applicable Spread means, (i) with respect to the Series 2022[B]-2 Bonds, the margin added to the SIFMA Municipal Swap Index to determine the SIFMA Index Rate and (ii) with respect to the Series 2022[B]-3 Bonds, the margin added to the product of the Applicable Factor and the SOFR Index to determine the Secured Overnight Financing Rate. The Applicable Spread will remain constant for the duration of the initial SIFMA Index Rate Period and the initial SOFR Index Rate Period. See “THE BONDS – Series 2022[B]-2 Bonds” and “Series 2022[B]-3 Bonds” herein.

⁴ Applicable Factor means the percentage or factor of the SOFR Index used to calculate the SOFR Index Rate for the Series 2022[B]-3 Bonds. The Applicable Factor will remain constant for the duration of the initial SOFR Index Rate Period. See “THE BONDS – Series 2022[B]-3 Bonds” herein.

The information contained in this Official Statement has been obtained from CCCFA, the Project Participant, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparty, 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.

CCCFA and the Project Participant each maintain a website and certain social media accounts. However, the information presented on such website and on such accounts is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the Bonds. 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

Central Coast Community Energy
East Bay Community Energy Authority
Marin Clean Energy
Silicon Valley Clean Energy Authority

PROJECT PARTICIPANT

Silicon Valley Clean Energy Authority

GREEN BONDS EXTERNAL REVIEWER

Kestrel Verifiers

BOND COUNSEL

Ballard Spahr LLP

PROJECT PARTICIPANT'S COUNSEL

Chapman and Cutler LLP

TRUSTEE

The Bank of New York Mellon Trust
Company, N.A

FINANCIAL ADVISOR

PFM Financial Advisors LLC

[This Page Intentionally Left Blank]

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
California Community Choice Financing Authority	1
The Bonds	1
Security for the Bonds	2
The Clean Energy Project	3
The Project Participant	4
The Prepaid Energy Sales Agreement	4
The Receivables Purchase Provisions	6
The Power Supply Contract	6
Re-Pricing Agreement	7
Interest Rate Swap	7
Commodity Swaps	7
Morgan Stanley Guarantees	8
The Energy Supplier, MSCG and Morgan Stanley	8
Certain Relationships	9
THE CLEAN ENERGY PROJECT	10
Assignment of Power Purchase Agreements by the Project Participant	10
Structure of the Clean Energy Project	11
CLEAN ENERGY PROJECT TRANSACTION STRUCTURE	13
DESIGNATION OF BONDS AS GREEN BONDS	14
Green Bonds Designation	14
Independent Second Party Opinion on Green Bond Designation and Disclaimer	14
INVESTMENT CONSIDERATIONS	14
Special and Limited Obligations	14
Structure of the Clean Energy Project	15
Performance by Others	15
Energy Remarketing	17
Limitations on Exercise of Remedies	17
Enforceability of Contracts	17
No Established Trading Market	18
Loss of Tax Exemption on the Bonds	18
Certain Risks of SOFR Index Rate Bonds	18
SECURITY FOR THE BONDS	19
The Indenture	19
Flow of Funds	21
Debt Service Fund - Debt Service Account	22
Administrative Fee Fund	23
Commodity Swap Payment Fund	23
Debt Service Fund - Redemption Account	23
Restriction on Additional Obligations	23
Amendment of Indenture	23

TABLE OF CONTENTS

	<u>Page</u>
Investment of Funds	24
Enforcement of Project Agreements.....	25
SOURCES AND USES OF FUNDS	27
THE BONDS	29
General.....	29
Interest	29
Tender	33
Redemption *	34
Book-Entry System.....	38
THE PREPAID ENERGY SALES AGREEMENT	39
Purchase and Sale	39
Delivery of Prepaid Energy	39
Assignment of Power Purchase Agreements	40
Failure to Deliver or Receive Energy	40
Energy Remarketing	41
Remarketing Non-Default Termination Event	42
Payment Provisions	42
Force Majeure	42
Assignment	43
Termination.....	43
Termination Payment.....	45
Security	45
Receivables Purchase Provisions.....	45
THE INTEREST RATE SWAP	46
General.....	46
Payments Under the Interest Rate Swap.....	46
Events of Default and Termination Events under the Interest Rate Swap	46
THE RE-PRICING AGREEMENT.....	47
General.....	47
THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY	48
THE POWER SUPPLY CONTRACT	48
General.....	48
Pricing Provisions.....	49
Project Administration Fee	49
Assignment of Power Purchase Agreements	49
Billing and Payment	50
Annual Refunds	50
Covenants of the Project Participant.....	50
Delivery Points; Title and Risk of Loss.....	51
Failure to Perform.....	51

TABLE OF CONTENTS

	<u>Page</u>
Remarketing of Energy	52
Force Majeure	52
Default	52
Assignment	53
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY	53
General	53
Powers and Authority	54
Governance and Management	55
Other CCCFA Projects	55
Separate Obligations	56
Limited Liability	56
COMMUNITY CHOICE AGGREGATORS	56
General	56
Establishment of Community Choice Aggregators	56
Community Choice Service Model	56
Service Contract Requirements and Registration with the Public Utilities Commission.....	57
Customer Participation and Opt-out Rights.....	57
Regulatory Compliance	57
Cost Recovery Related to Transfer of Customers to a CCA	57
THE COMMODITY SWAPS	58
CCCFA Commodity Swap	58
Form of Commodity Swaps and Term	58
Payment	58
Early Termination	59
Custodial Agreements.....	63
THE COMMODITY SWAP COUNTERPARTY	63
CONTINUING DISCLOSURE	64
LITIGATION.....	65
NO FINANCIAL STATEMENTS	65
FINANCIAL ADVISOR	65
UNDERWRITING	65
CERTAIN RELATIONSHIPS	66
RATING	67
TAX MATTERS.....	67
APPROVAL OF LEGAL MATTERS.....	69
MISCELLANEOUS	70

TABLE OF CONTENTS

Page

APPENDIX A	—	THE PROJECT PARTICIPANT
APPENDIX B	—	DEFINITIONS OF CERTAIN TERMS
APPENDIX C	—	SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE
APPENDIX D	—	FORM OF CONTINUING DISCLOSURE UNDERTAKING
APPENDIX E	—	FORM OF OPINION OF BOND COUNSEL
APPENDIX F	—	FORM OF SECOND PARTY OPINION REGARDING GREEN BOND DESIGNATION
APPENDIX G	—	BOOK-ENTRY SYSTEM
APPENDIX H	—	REDEMPTION PRICE OF THE BONDS
APPENDIX I	—	SCHEDULE OF TERMINATION PAYMENTS

[This Page Intentionally Left Blank]

OFFICIAL STATEMENT

\$ _____ *

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS
SERIES 2022[B]**

INTRODUCTION

This Official Statement, which includes the cover page and appendices attached hereto, contains information concerning (a) California Community Choice Financing Authority (“CCCFA” or the “Issuer”), (b) CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Green Bonds) (Term Rate) (the “Series 2022[B]-1 Bonds”), CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-2 (Green Bonds) (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”) and CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-3 (Green Bonds) (SOFR Index Rate) (the “Series 2022[B]-3 Bonds” and, together with the Series 2022[B]-1 Bonds and the Series 2022[B]-2 Bonds, 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 Participant, East Bay Community Energy Authority, 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 Prepaid Energy and the sale thereof to the Project Participant, and the entry into of the related agreements described herein (referred to herein as the “Clean Energy Project”). See “CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY” and “COMMUNITY CHOICE AGGREGATORS” herein.

The Bonds

The Bonds will be issued in three separate Series:

- (a) \$_____ Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Term Rate) (the “Series 2022[B]-1 Bonds”),
- (b) \$_____ Clean Energy Project Revenue Bonds, Series 2022[B]-2 (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”), and

* Preliminary; subject to change.

- (c) \$_____ Clean Energy Project Revenue Bonds, Series 2022[B]-3 (SOFR Index Rate) (the “Series 2022[B]-3 Bonds”).

The Series 2022[B]-2 Bonds and the Series 2022[B]-3 Bonds are sometimes referred to herein as the “*Index Rate Bonds*.”

From their Initial Issue Date to and including [____], 202[___]* (the “*Initial Interest Rate Period*”):

- (a) the Series 2022[B]-1 Bonds will bear interest in a Term Rate Period, with interest payable semiannually on each [____] 1 and [____] 1, commencing [____], 202[___]*,
- (b) the Series 2022[B]-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 [____] 202[___]*, and
- (c) the Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate in a SOFR Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of [____] 202[___]*;

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 [____] 1, 205[___] are required to be tendered for purchase on [____], 202[___]* (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 The Bank of New York Mellon Trust Company, N.A., as trustee (the “*Trustee*”). The Bonds are special and limited obligations of CCCFA, are payable solely from and secured

* Preliminary; subject to change.

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 (hereinafter defined) 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 Contract, 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 Contract, 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.

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, THE PROJECT PARTICIPANT, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY 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 Clean Energy Project, which includes the cost of acquisition of a 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*") and the sale thereof to the Project Participant as hereinafter described. The Clean Energy Project is structured to assist the Project Participant 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 the Project Participant will assign to the Energy Supplier, or to Morgan Stanley Capital Group Inc. ("*MSCG*"), a portion of the Project Participant's rights and obligations (the "*Assigned*

Rights and Obligations”) to receive certain quantities (*“Assigned Quantities”*) of EPS Compliant Energy (*“Assigned Energy”*), together with associated Green Attributes (as defined in APPENDIX B hereto), renewable energy credits (*“RECs”*), capacity, or other related products (collectively, *“Assigned Products”*) under existing and future power purchase agreements (*“PPAs”*). With respect to any such assignment to MSCG, MSCG will redeliver such Assigned Energy and other Assigned Products to the Energy Supplier to meet the Energy Supplier’s obligations to deliver Prepaid Energy to CCCFA under the Prepaid Energy Sales Agreement. CCCFA will then deliver such Assigned Energy and other Assigned Products to the Project Participant under its Power Supply Contract. See “THE CLEAN ENERGY PROJECT”.

The Prepaid Energy Sales Agreement, the Power Supply Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, 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 Participant 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 and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap.

For a summary of certain terms and provisions of the Prepaid Energy Sales Agreement, see “THE PREPAID ENERGY SALES AGREEMENT”.

The Project Participant

CCCFA has entered into a Power Supply Contract (the *“Power Supply Contract”*) for the sale of the Prepaid Energy with Silicon Valley Clean Energy Authority (*“SVCE”*), a joint powers authority and a community choice aggregator duly organized and existing under the laws of the State of California (the *“Project Participant”*). See “COMMUNITY CHOICE AGGREGATORS” for certain information with respect to California community choice aggregators. During the Delivery Period, the Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. For a summary of certain terms and provisions of the Power Supply Contract, see “THE POWER SUPPLY CONTRACT”. See APPENDIX A for certain information with respect to the Project Participant.

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 Assigned Quantities delivered under the Initially Assigned PPA or any future Assigned PPA for any month is less than Prepaid Quantity for such month, CCCFA will be deemed to have requested for the Energy Supplier to remarket the portion of the Assigned Quantities not delivered and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable assigned price. Other than the Energy Supplier’s remarketing payment obligation, 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. To the extent that EPS Compliant Energy is not available for delivery pursuant to the Prepaid Agreement, MSES’s obligation to deliver the Assigned Products will be replaced with an obligation to deliver firm (LD) energy (*“Base Energy”*), and 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 or remarketed under the Prepaid Energy Sales Agreement, including for *Force Majeure* events.

Replacement of Initially Assigned PPA. In the event of any expiration, termination or anticipated termination of the Initial Assigned Rights and Obligations, the Project Participant is required to use Commercially Reasonable Efforts to assign replacement Assigned Rights and Obligations to MSCG for delivery of Assigned Energy equal to 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. In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, CCCFA will be deemed to have requested that the Energy Supplier remarket the portion of the Assigned Quantities not delivered, and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable index price. Any such remarketing will be treated as a purchase by the Energy Supplier for its own account and will constitute a private-business use sale, and the 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.

In the event of any expiration or termination of an Assigned PPA, the 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. To the extent the Project Participant exercises Commercially Reasonable Efforts to enter into such a limited assignment but is unable to do so, then, subject to certain conditions, MSES shall be obligated remarket Base Energy and purchase such Base Energy for its own account at the applicable index price, and the Project Participant shall be obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of energy. Otherwise, to the extent that the Project Participant has not exercised commercially reasonable efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract, 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. See “THE PREPAID ENERGY SALES AGREEMENT – *Energy Remarketing*” and “THE POWER SUPPLY CONTRACT – *Remarketing of Energy*”.

Base Energy is not expected to be delivered during the Initial Reset Period.

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 and the Investment Agreement Provider pay and perform their 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 I.

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 Participant under the Power Supply Contract. Upon a payment default by the Project Participant, 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 amount due from the Project Participant for any two consecutive months. 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*”.

See “THE PREPAID ENERGY SALES AGREEMENT—*Receivables Purchase Provisions*”.

The Power Supply Contract

The Power Supply Contract provides for the sale to the Project Participant 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 Contract, CCCFA has agreed to deliver, and the Project Participant has agreed to purchase, such Assigned Quantities and to cause the remarketing of any Base Energy during the Delivery Period. Base Energy is required to be remarketed under the Prepaid Energy Sales Agreement, subject to the requirements set forth therein. 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.

The payments required to be made under the Power Supply Contract, together with any net amounts received by CCCFA under the CCCFA Commodity Swap and Interest Rate Swap described below, constitute the primary and expected source of the Revenues pledged to the payment of the Bonds. The obligations of the Project Participant under the Power Supply Contract are payable solely from revenues of the Project Participant derived from its community choice aggregator power supply operations. Under the Power Supply Contract, the Project Participant makes payments directly to the Trustee for deposit into the Revenue Fund. See “THE POWER SUPPLY CONTRACT”.

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 Participant under the Power Supply Contract during each Reset Period.

The Initial Reset Period under the Prepaid Energy Sales Agreement ends one month before the end of the Initial Interest Rate Period, and each subsequent Reset Period will end one month before the end of the corresponding Interest Rate Period. The Initial Reset Period begins on the first day of [_____] 202[___] and ends on the last day of [_____] 202[___]*. See “The RE-PRICING AGREEMENT”.

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

CCCFA Commodity Swap. CCCFA has entered into the CCCFA Commodity Swap under which CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for the monthly notional quantities specified in the CCCFA Commodity Swap.

MSES Commodity Swap. MSES has entered into the MSES Commodity Swap with the same Commodity Swap Counterparty under which MSES pays a fixed price and the Commodity Swap Counterparty pays a floating price. The notional energy quantities under the MSES Commodity Swap match those under the CCCFA Commodity Swap and, accordingly, those under the Prepaid Energy Sales Agreement.

Term. The Commodity Swaps extend for the term of the delivery period under the Prepaid Energy Sales Agreement, but are subject to early termination upon the occurrence of certain events. Termination of either of the Commodity Swaps without replacement by CCCFA and MSES will give rise to early termination rights under, and in some cases result in automatic termination of, the Prepaid Energy Sales Agreement, which would result in the extraordinary mandatory redemption of the Bonds pursuant to the Indenture.

* Preliminary; subject to change.

Commodity Swap Counterparty. The commodity swap counterparty is [Royal Bank of Canada] (the “*Commodity Swap Counterparty*”). For a description of certain provisions of the Commodity Swaps, see “THE COMMODITY SWAPS.” For information regarding the Commodity Swap Counterparty, see “THE COMMODITY SWAP COUNTERPARTY.”

Custodial Agreements. CCCFA will enter into a Custodial Agreement (the “*CCCFA Custodial Agreement*”), with the Commodity Swap Counterparty and the Custodian to administer payments under the CCCFA Commodity Swap. MSES will enter into a separate Custodial Agreement (the “*MSES Custodial Agreement*,” and together with the MSES Custodial Agreement, the “*Custodial Agreements*”), with the Commodity Swap Counterparty and the Custodian, to administer payments under MSES 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 MSES resulting from a failure of the Commodity Swap Counterparty to make payments to MSES under the MSES Commodity Swap. See “The Commodity Swaps—Custodial Agreements.”

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*”). See “THE PREPAID ENERGY SALES AGREEMENT—*Security*” and “THE INTEREST RATE SWAP—*Morgan Stanley Guarantee*”. The payment obligations of MSES under the MSES Commodity Swap are unconditionally guaranteed by Morgan Stanley under a separate guarantee agreement (the “*Morgan Stanley Commodity Swap Guarantee*”). See “THE COMMODITY SWAPS—*The MSES Commodity Swap*”. The Morgan Stanley Guarantee and the Morgan Stanley Commodity Swap Guarantee are referred to collectively herein as the “*Morgan Stanley Guarantees*.”

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 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 MSES Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees.

MSCG is an indirect, 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, the Receivables Purchaser, the counterparty to the MSES Commodity Swap and the Interest Rate Swap provider, 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 MSES 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 Counterparty, the Project Participant and the Bonds, and summaries of certain provisions of the Indenture, the Power Supply Contract, 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 the Bonds are converted to another Interest Rate Period.

THE CLEAN ENERGY PROJECT

CCCFA is issuing the Bonds to finance the Clean Energy Project, which includes the cost of acquisition of a 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*”) and the sale thereof to the Project Participant as hereinafter described. The term “*EPS Compliant Energy*” means three-phase, 60-cycle alternating current electric energy (“*Energy*”) that the Project Participant can contract for and purchase in compliance with 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 the 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 Participant 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 a Power Supply Contract (the “*Power Supply Contract*”) for the sale of the Prepaid Energy with the Project Participant. During the Delivery Period, the Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. For a summary of certain terms and provisions of the Power Supply Contract, see “THE POWER SUPPLY CONTRACT”. See APPENDIX A for certain information with respect to the Project Participant.

Assignment of Power Purchase Agreements by the Project Participant

California’s EPS regulations, codified as Senate Bill 1368 (2006) (“*SB 1368*”) prevents all California utilities, both privately and publicly owned, from signing long-term contracts from a specified source with a greenhouse gas emissions greater per unit of power than the emissions of greenhouse gases for combined-cycle natural gas baseload generation or from an unspecified source. For baseload generation procured under contracts, a long-term commitment is a contract of five years or longer, and the Project Participant has adopted long-term plans for the procurement of EPS Compliant Energy.

Right to Assign Existing and Future Power Purchase Agreements. The Clean Energy Project is structured to assist the Project Participant 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 the Project Participant will assign to the Energy Supplier, or to Morgan Stanley Capital Group Inc. (“*MSCG*”), a portion of the Project Participant’s rights and obligations (the “*Assigned Rights and Obligations*”) to receive certain quantities (“*Assigned Quantities*”) of EPS Compliant Energy (“*Assigned Energy*”), together with associated Green Attributes (as defined in APPENDIX B hereto), renewable energy credits (“*RECs*”), capacity, or other related products (collectively, “*Assigned Products*”) under existing and future power purchase agreements (“*PPAs*”). With respect to any such assignment to MSCG, MSCG will redeliver such Assigned Energy and

other Assigned Products to the Energy Supplier to meet the Energy Supplier's obligations to deliver Prepaid Energy to CCCFA under the Prepaid Energy Sales Agreement. CCCFA will then deliver such Assigned Energy and other Assigned Products to the Project Participant under its Power Supply Contract. Concurrent with the execution of the Prepaid Energy Sales Agreement and the Power Supply Contract, the Project Participant has entered into a limited assignment agreement (each, an "Assignment Agreement") relating to a specific PPA (the "Initially Assigned PPA") among the Project Participant, the Energy Supplier and MSCG, as seller under the Initially Assigned PPA, to assign the Assigned Rights and Obligations (the "Initial Assigned Rights and Obligations") to the Energy Supplier beginning [_____, 1, 20__] and ending [_____, 20__].

In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations under the Assigned PPAs, the Project Participant is obligated to exercise Commercially Reasonable Efforts to assign Replacement Assigned Rights and Obligations to MSCG for delivery of EPS Compliant Energy to the Energy Supplier. The Project Participant 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 of a termination of the Prepaid Energy Sales Agreement, the rights, title and interest under the Assigned PPAs will revert back to the Project Participant, 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 the Project Participant, no termination payment other than payment for delivered Assigned Products will be required to be made by CCCFA, the Energy Supplier or MSCG.

Structure of the Clean Energy Project

The Prepaid Energy Sales Agreement, the Power Supply Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, 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 Participant 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 and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap. 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 Participant under the Power Supply Contract. 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.
- The Project Participant has agreed to pay for Prepaid Energy tendered for delivery under its Power Supply Contract at the Contract Price. In the event the Project Participant fails

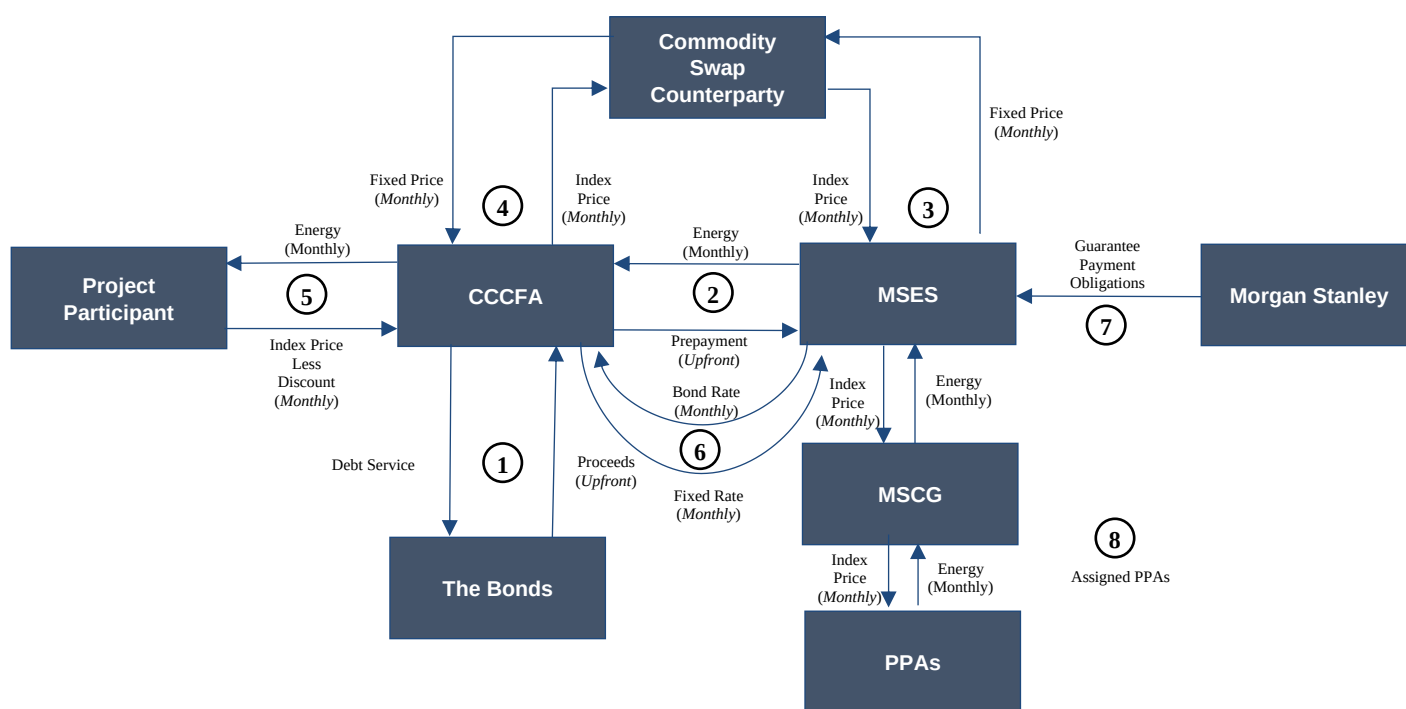
to pay when due any amounts owed under its Power Supply Contract, CCCFA has covenanted in the Indenture to exercise its right under the Power Supply Contract to suspend further deliveries of Prepaid Energy to the Project Participant and to give notice to the Energy Supplier to follow the provisions of the Prepaid Energy Sales Agreement with respect to Prepaid Energy for which delivery has been suspended.

- In the event the 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 MSES is obligated to purchase Put Receivables.
- In the event of a suspension of Prepaid Energy deliveries to the 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 remarketed or purchased, less certain applicable fees.
- If the 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 further described below.
- [____], 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 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 the Prepaid Energy Sales Agreement is terminated, the Series 2022[B]-1 Bonds are to be redeemed at their Amortized Value and the Series 2022[B]-2 Bonds and Series 2022[B]-3 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.”

(Remainder of page intentionally left blank)

CLEAN ENERGY PROJECT TRANSACTION STRUCTURE



Transaction Overview

- 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 (or at floating rates swapped to a fixed rate under the Interest Rate Swap) during the Initial Interest Rate Period.
- 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 Energy that (i) is remarketed based on the applicable index price, or (ii) is 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.
- 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.
- CCCFA 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 Participant at index prices, creating the economic effect of fixing the discount below the index (market) price at which Energy is sold to the Project Participant. CCCFA Commodity Swap enables CCCFA to sell prepaid quantities to the Project Participant 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.
- Project Participant:** Under the Energy Supply Contract, CCCFA will sell to the Project Participant all of the Energy delivered by MSES on a pay-as-you-go basis at an index price 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.
- Interest Rate Swap:** CCCFA will enter into the Interest Rate Swap with MSES under which it will pay a fixed rate and receive a floating rate with respect to the interest rate on the Index Rate Bonds, as described herein.
- MS Guarantees:** The payment obligations of MSES under the Prepaid Energy Sales Agreement and the MSES Commodity Swap will be guaranteed by Morgan Stanley.
- Assigned PPAs:** The Project Participant is expected to assign its rights to receive EPS Compliant Energy under existing and future PPAs to MSES (or, if MSCG is not the seller under the applicable PPA, to MSCG for delivery of the Assigned Product 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, the CCCFA Commodity Swap, the Power Supply Contract and related documents enables CCCFA to receive dependable Energy supplies at a discount below market prices for sale to the Project Participant. 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.

DESIGNATION OF BONDS AS GREEN BONDS

Green Bonds Designation

Per the International Capital Market Association (“ICMA”), Green Bonds are any type of bond instrument where the proceeds will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects and which are aligned with the four core components of the Green Bond Principles. The four core components are: 1. Use of Proceeds; 2. Process for Project Evaluation and Selection; 3. Management of Proceeds; and 4. Reporting.

Kestrel Verifiers has determined that the Bonds are in conformance with the four core components of the ICMA Green Bond Principles, as described in Kestrel Verifiers’ “Second Party Opinion”, which is attached hereto as Appendix F.

Independent Second Party Opinion on Green Bond Designation and Disclaimer

For over 20 years, Kestrel Verifiers has been consulting in sustainable finance. Kestrel Verifiers, a division of Kestrel 360, Inc. is an Approved Verifier accredited by the Climate Bonds Initiative and an Observer for the ICMA Green Bond Principles and Social Bond Principles. Kestrel Verifiers reviews transactions in all asset classes worldwide for alignment with ICMA Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and the Climate Bonds Initiative Standards and criteria.

The Second Party Opinion issued by Kestrel Verifiers does not and is not intended to make any representation or give any assurance with respect to any other matter relating to the bonds. Designations by Kestrel Verifiers are not a recommendation to any person to purchase, hold, or sell the bonds and such labeling does not address the market price or suitability of these bonds for a particular investor and does not and is not in any way intended to address the likelihood of timely payment of interest or principal when due.

In issuing the Second Party Opinion, Kestrel Verifiers has assumed and relied upon the accuracy and completeness of the information made publicly available by CCCFA, the Project Participant, or that was otherwise made available to Kestrel Verifiers.

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. The Project Participant is not obligated to make payments in respect of the debt service on the Bonds. The Project Participant is obligated only to purchase and pay for Prepaid Energy tendered for delivery by CCCFA at the Contract Price set forth in the Energy Supply Contract. None of 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 Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, 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 Participant 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 and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap. See “THE CLEAN ENERGY PROJECT – *Structure of the Clean Energy Project*”.

In the event 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 the Prepaid Energy Sales Agreement is terminated, the Series 2022[B]-1 Bonds are to be redeemed at their Amortized Value and the Series 2022[B]-2 Bonds and the Series 2022[B]-3 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 MSES Commodity Swap and the Interest Rate Swap, (b) Morgan Stanley under the Morgan Stanley Guarantees, and (c) 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 Interest Rate Swap, the Power Supply Contract and, if applicable, the CCCFA Commodity Swap.

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 make payments of replacement cost damages for Prepaid Energy not delivered and for any remarketed 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 MSES 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 MSES Commodity Swap, the Interest Rate Swap and the Morgan Stanley Guarantees, respectively, for their full terms;
- failure by MSES to purchase Put Receivables required to be sold by the Trustee and purchased by MSES pursuant to the Receivables Purchase Provisions in the event that the 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;
- 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 MSES 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 MSES 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 the Investment Agreement Provider pay and perform their respective contract obligations when due, or in the event of nonpayment by the Energy Supplier, payment by Morgan Stanley pursuant to the Morgan Stanley Guarantee. 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

The Energy Supplier must remarket any Base Energy required to be delivered under the Prepaid Energy Sales Agreement. In the event 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. See “INTRODUCTION – *Energy Remarketing*”, “THE PREPAID ENERGY SALES AGREEMENT – *Energy Remarketing*”, and “THE POWER SUPPLY CONTRACT – *Remarketing of Energy*”.

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, the Commodity Swap Counterparty, the 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 Contract contain various covenants and agreements on the part of CCCFA, the Energy Supplier and the Project Participant that are intended to establish and maintain the tax-exempt status of the Bonds. CCCFA, the Energy Supplier and the Project Participant 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 Participant 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".

Certain Risks of SOFR Index Rate Bonds

The Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate described herein, which is based on the Secured Overnight Financing Rate reported on the website of the Federal Reserve Bank of

New York (the “*SOFR Index*”). See “THE SERIES 2022[B]-3 BONDS—Interest—Series 2022[B]-3 Bonds” below for descriptions of the SOFR Index Rate and related matters.

An investment in the Series 2022[B]-3 Bonds entails risks not associated with an investment in a fixed rate security or a debt security the interest rate on which is not based on the SOFR Index. Investors should consult their own financial and legal advisors about the risks associated with an investment in the Series 2022[B]-3 Bonds and the suitability of an investment in the Series 2022[B]-3 Bonds considering their particular circumstances, and possible scenarios for economic, interest rate and other factors that may affect their investment.

Because the SOFR Index is independently published by the Federal Reserve Bank of New York (the “*NY Federal Reserve*”) based on data received from other sources, CCCFA and the Calculation Agent have no control over its determination, calculation, or publication. There can be no guarantee that the SOFR Index will not be discontinued or fundamentally altered in a manner that is materially adverse to the interests of investors in the Series 2022[B]-3 Bonds. A change in the manner in which the SOFR Index is calculated may result in a reduction of the amount of interest payable on the Series 2022[B]-3 Bonds and/or the trading prices of the Series 2022[B]-3 Bonds. If the rate at which interest on the Series 2022[B]-3 Bonds accrues on any day declines to zero or becomes negative, no interest will be payable on the Series 2022[B]-3 Bonds in respect of that day.

The NY Federal Reserve began to publish the SOFR Index in April 2018 and has also published historical indicative data for the SOFR Index going back to August 2014. Investors should not rely on any historical changes or trends in the SOFR Index as an indicator of future changes in the SOFR Index. Also, since the SOFR Index is a relatively new market index, the Series 2022[B]-3 Bonds may have a limited trading market when issued, and an established trading market may never develop or may be illiquid. Market terms of debt securities indexed to the SOFR Index, such as the spread over the index reflected in the interest rate provisions, may evolve over time, and trading prices of the Series 2022[B]-3 Bonds may be lower than those of later-issued indexed debt securities as a result. Similarly, if the SOFR Index does not prove to be widely used in securities similar to the Series 2022[B]-3 Bonds, the trading prices of the Series 2022[B]-3 Bonds may be lower than those of bonds linked to indices that are more widely used. Investors in the Series 2022[B]-3 Bonds may not be able to sell the Series 2022[B]-3 Bonds at all or may not be able to sell the Series 2022[B]-3 Bonds at prices that will provide them with a yield comparable to similar investments that have a developed secondary market, and may consequently suffer from increased pricing volatility and market risk.

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 Contract, 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 CCCFA 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 the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

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 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.

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 Contract and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale and/or transmission of Energy or otherwise with respect to the 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) any amounts paid by the Project Participant under the Prepaid Clean Energy Project Administration Agreement; (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) amounts paid by the Project Participant in respect of the Project Administration Fee. 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 Contract; (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 and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of CCCFA’s obligations under the Power Supply Contract; (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, and all other reasonable administrative and operating expenses of CCCFA which are incurred by CCCFA with respect to the Bonds, the Indenture, or the Clean Energy Project, 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 allocable to the Clean Energy Project; provided that, for purposes of the transfers from the Revenue Fund described in this section under the heading “*Flow of Funds*”, Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. 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, THE MEMBERS, THE PROJECT PARTICIPANT, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER.

THE OBLIGATION OF THE PROJECT PARTICIPANT TO MAKE PAYMENTS TO CCCFA UNDER THE POWER SUPPLY CONTRACT IS NOT, NOR SHALL IT BE CONSTRUED AS, A GUARANTY OR ENDORSEMENT OF OR A SURETY FOR, THE BONDS. SUCH OBLIGATION OF THE PROJECT PARTICIPANT IS NOT A GENERAL OBLIGATION OF THE PROJECT PARTICIPANT AND IS 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 PARTICIPANT.

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 promptly by the Trustee upon receipt thereof into the Revenue Fund. 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 is required to 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:

first, 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 necessary for the payment of Operating Expenses coming due for such Month;

second, 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 the Indenture, or (B) the amount necessary to cause an amount equal to the

cumulative unpaid Scheduled Debt Service Deposits due through such date to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

third, 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

fourth, to the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Put Receivables and the payment of interest on all Put Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

provided, however, that if the 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 *second* above to the extent necessary such that the amount available for transfer under *third* 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 under *second* 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 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 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 any 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 Reserve 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, and (b) any Interest Rate Swap Receipts, which are to be deposited into the Debt Service Account, all as provided in the Indenture.

Debt Service Fund - 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. 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 [_____] 1, 20[___]*.

Administrative Fee Fund

All Project Administration Fees, together with any amounts paid by the Project Participant pursuant to the Prepaid Clean Energy Project Administration Agreement, shall be deposited by the Trustee into the Administrative Fee Fund. The Trustee is required to apply amounts on deposit in the Administrative Fee Fund to pay Operating Expenses promptly upon receipt of a Written Request of CCCFA directing such payment. In the event amounts on deposit in the Administrative Fee Fund are insufficient to make any payments directed in the Written Request of CCCFA, the Trustee shall promptly notify the Project Participant, at its address shown in the Indenture, of the fact and amount of such deficiency.

Commodity Swap Payment Fund

The amounts credited to 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.

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.

Debt Service Fund - Redemption Account

In the event of an early termination of the Prepaid Energy Sales Agreement, CCCFA will direct the Energy Supplier to 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

Other than the Bonds and any refunding bonds, no additional bonds or other obligations are authorized to be issued under the Indenture or for which payment is otherwise secured by a pledge or assignment of, or lien on, the Trust Estate.

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, and upon receipt of a Rating Confirmation if the Bonds affected by such change are rated by a Rating Agency.

* Preliminary; subject to change.

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, 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 must be with providers that are rated (or whose financial obligations to the Issuer receive credit support from an entity rated) 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. See “SECURITY FOR THE BONDS—*Investment of Funds*”.

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 Contract. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Power Supply Contract, as well as any other contract or contracts entered into relating to the Clean Energy Project, and duly perform its covenants and agreements thereunder.

CCCFA has also covenanted to exercise promptly its right to suspend all Energy deliveries under a Power Supply Contract if the Project Participant thereunder fails to pay when due any amounts owed to CCCFA 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 delivers a Remarketing Election Notice (as defined in each Power Supply Contract) in respect of 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 any 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 Participant of, or amendment to or otherwise take any action under or in connection with any Power Supply Contract that will impair the ability of CCCFA to collect Revenues in each Fiscal Year which, together with the other amounts available therefor, shall provide an amount sufficient to pay the amounts set forth in 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 agree to the amendment of a Power Supply Contract or to the assignment of a Power Supply Contract by the Project Participant to another Municipal Utility.

Enforcement of Agreements by the Trustee. Under the Indenture, CCCFA has irrevocably pledged and collaterally assigned to the Trustee its rights to issue notices and to take any other actions that CCCFA is required or permitted to take in order to enforce performance under certain documents, including (a) the Prepaid Energy Sales Agreement, (b) the Receivables Purchase Provisions, (c) the Power Supply Contract, (d) the CCCFA Commodity Swap, (e) the Interest Rate Swap, and (f) the Morgan Stanley Guarantee. CCCFA has retained, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights for which it has pledged and collaterally assigned to the Trustee as described in the preceding sentence; *provided, however*, if an Event of Default has occurred and is continuing, the Trustee will have the right to notify CCCFA to cease exercising such rights, subject to certain rights of the Energy Supplier with respect to the Power Supply Contract.

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 thereunder.

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) on the date on which a Failed Remarketing occurs, 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 of, 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 with respect to such assignment or amendment.

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) CCCFA causes or permits the termination of the Prepaid Energy Sales Agreement prior to or as of such early termination date.

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 at any time upon delivery to the Trustee of a Rating Confirmation. If the CCCFA Commodity Swap is subject to termination by either party in accordance with its terms, then (A) CCCFA may terminate the CCCFA Commodity Swap if CCCFA has the right to do so, and (B) CCCFA may enter into a replacement CCCFA Commodity Swap with an alternate Commodity Swap Counterparty without a Rating Confirmation, but only if the replacement CCCFA Commodity Swap is identical in all material respects to the existing CCCFA Commodity Swap, except for the identity of the Commodity Swap Counterparty, and (1) the replacement Commodity Swap Counterparty 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 CCCFA determines to be necessary, and (3) in either case, the Commodity Swap Counterparty enters into a replacement Custodial Agreement with the Energy Supplier and the Custodian that is identical in all material respects to the existing Custodial Agreement.

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) after 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 MSES 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) in all other cases, the Prepaid Energy Sales Agreement will terminate prior to or as of such early termination date.

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 by either party in accordance with its terms, then (A) CCCFA may terminate the Interest Rate Swap if CCCFA has the right to do so, and (B) CCCFA may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without a 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 CCCFA shall determine 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:

Par Amount	\$
Original Issue Premium	

	Total Sources	\$
USES:		
	Deposit to Project Fund ¹	\$
	Costs of Issuance ²	
	Total Uses	\$

¹ Includes the prepayment amount and capitalized interest on the Bonds (which will be transferred to the Debt Service Account).

² Includes 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 any integral 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 G 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 2022[B]-1 Bonds

During the Initial Interest Rate Period, the Series 2022[B]-1 Bonds will bear interest in a Term Rate Period, with the Series 2022[B]-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 2022[B]-1 Bonds will be payable semiannually on [_____] 1 and [_____] 1 of each year, commencing [_____] 1, 202[____]*. During the Initial Interest Rate Period, interest on the Series 2022[B]-1 Bonds will be computed on the basis of a 360-day year of twelve 30-day months.

Series 2022[B]-2 Bonds

The Initial Interest Rate Period for the Series 2022[B]-2 Bonds will be a SIFMA Index Rate Period, and the Series 2022[B]-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 2022[B]-2 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [_____] 202[____]*, 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. One Business Day prior to the Initial Issue Date of the Series 2022[B]-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, (A) the SIFMA Index Rate shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day, the Business Day immediately succeeding such Wednesday, 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. All percentages resulting from any step in the calculation of interest on the Series 2022[B]-2 Bonds while in the SIFMA Index Rate Period will be rounded to six decimal places (with 0.0000005 being rounded up to 0.000001).

SIFMA Index Rate. The SIFMA Index Rate is a variable per annum rate of interest equal to the sum of (i) the SIFMA Index then in effect plus (ii) the Applicable Spread.

Applicable Spread. The Applicable Spread for the Series 2022[B]-2 Bonds is the margin added to the SIFMA Index as shown on the inside cover page of this Official Statement for the Series 2022[B]-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 Refinitiv 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, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. 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 CCCFA in compliance with the Indenture.

Index Rate Reset Date. The Index Rate Reset Date for the SIFMA Index Rate applicable to the Series 2022[B]-2 Bonds shall be Thursday of each week or, if Thursday is not a Business Day, the next succeeding Business Day.

Series 2022[B]-3 Bonds

The Initial Interest Rate Period for the Series 2022[B]-3 Bonds will be a SOFR Index Rate Period, and the Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate determined as described below during the SOFR Index Rate Period.

Interest Payments. Interest on each Series 2022[B]-3 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [_____] 202[___]*, 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 SOFR Index Rate. One Business Day prior to the Initial Issue Date of the Series 2022[B]-3 Bonds, the SOFR 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, (a) the SOFR Index shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each SOFR Publish Date and (b) the Calculation Agent shall determine and provide to the Trustee the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date. The amount of interest due on the Series 2022[B]-3 Bonds on any Interest Payment Date shall be calculated on each SOFR Interest Calculation Date on the basis of the actual number of days in the SOFR Accrual Period immediately preceding such Interest Payment Date. All percentages resulting from any step in the calculation of interest on the Series 2022[B]-3 Bonds while in the SOFR Index Rate Period will be rounded, to six decimal places (with 0.0000005 being rounded up to 0.000001).

SOFR Index Rate. The SOFR Index Rate is a daily variable interest rate equal to the sum of (a) the product of the SOFR Index and the Applicable Factor plus (b) the Applicable Spread on each day of a SOFR Effective Period not to exceed the Maximum Rate.

Applicable Factor. The Applicable Factor is the percentage of the SOFR Index shown on the inside cover page of this Official Statement for the Series 2022[B]-3 Bonds. The Applicable Factor will remain constant for the duration of the SOFR Index Rate Period.

Applicable Spread. The Applicable Spread for the Series 2022[B]-3 Bonds is the margin added to the product of the SOFR Index and the Applicable Factor shown on the inside cover page of this Official Statement. The Applicable Spread will remain constant for the duration of the SOFR Index Rate Period.

Business Day. For purposes of determining the SOFR Index Rate, “*Business Day*” means any day other than (a) Saturday or Sunday, (b) a day on which commercial banks in New York, New York 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, or (e) any day that the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the purposes of trading United States government securities.

Index Rate Reset Date. The Index Rate Reset Date for the Series 2022[B]-3 Bonds is each SOFR Effective Date.

NY Federal Reserve’s Website is the website of the NY Federal Reserve currently at <http://www.newyorkfed.org>, or any successor website of the NY Federal Reserve.

SOFR Accrual Period. The SOFR Accrual Period is the number of actual days from, and including, (a) the Initial Issue Date or the preceding Interest Payment Date, whichever is most recent, to (but not including) (b) the next succeeding Interest Payment Date regardless of the actual number of calendar days in any Month.

SOFR Effective Date. The SOFR Effective Date is each Business Day.

SOFR Effective Period. The SOFR Effective Period is the number of actual days from a SOFR Effective Date to the next SOFR Effective Date.

SOFR Index. The SOFR Index is the “Secured Overnight Financing Rate” reported on the NY Federal Reserve’s Website, or reported by any successor to the NY Federal Reserve as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing the SOFR Index as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date. For example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, February 17, 2022, the Calculation Agent uses SOFR published on the SOFR Publish Date of Tuesday, February 15, 2022, which is the SOFR Index for the SOFR Lookback Date of Monday, February 14, 2022. SOFR is published every Business Day at 8:00 a.m. and may be revised until 2:30 p.m., as described herein. If the SOFR 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 designated by CCCFA in writing (with notice to, and which is available to, the Calculation Agent) in compliance with the Indenture.

SOFR Interest Calculation Date. The SOFR Interest Calculation Date is the last Business Day of each month.

SOFR Lookback Date. The SOFR Lookback Date is the third Business Day immediately preceding each SOFR Effective Date.

SOFR Publish Date. The SOFR Publish Date is the second Business Day immediately preceding each SOFR Effective Date.

Additional Information Regarding SOFR. The Secured Overnight Financing Rate (or SOFR) is published by the NY Federal Reserve and is intended to be a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities. The NY Federal Reserve reports that the Secured Overnight Financing Rate includes all trades in the Broad General Collateral Rate (as defined on the NY Federal Reserve's Website), plus bilateral Treasury repurchase agreement transactions cleared through the delivery-versus-payment service offered by the Fixed Income Clearing Corporation (the "*FICC*"), a subsidiary of the Depository Trust and Clearing Corporation ("*DTCC*"). The Secured Overnight Financing Rate is filtered by the NY Federal Reserve to remove a portion of the foregoing transactions considered to be "specials" (as defined on the NY Federal Reserve's Website).

The NY Federal Reserve reports that the Secured Overnight Financing Rate is calculated as a volume-weighted median of transaction-level tri-party repo data collected from The Bank of New York Mellon as well as General Collateral Finance repurchase agreement transaction data and data on bilateral Treasury repurchase transactions cleared through the FICC's delivery-versus-payment service. The NY Federal Reserve notes that it obtains information from DTCC Solutions LLC, an affiliate of DTCC. The NY Federal Reserve notes on its publication page for the Secured Overnight Financing Rate that use of the Secured Overnight Financing Rate is subject to important limitations and disclaimers, including that the NY Federal Reserve may alter the methods of calculation, publication schedule, rate revision practices or availability of the Secured Overnight Financing Rate at any time without notice. Secured Overnight Financing Rate rates are subject to revision until 2:30 p.m. on any date on which the Secured Overnight Financing Rate is published. The description of the Secured Overnight Financing Rate herein is not and does not purport to be exhaustive.

For a more complete description of the Secured Overnight Financing Rate, see the NY Federal Reserve's Website at <https://apps.newyorkfed.org/markets/autorates/sofr>. Such website is not incorporated by reference herein.

For a summary of certain risks relating to SOFR Index Rate Bonds, see "Certain Risks of SOFR Index Rate Bonds" below.

Calculation Agent

The Bank of New York Mellon Trust Company, N.A. will be appointed by CCCFA as Calculation Agent for any Series 2022[B]-2 Bonds and any Series 2022[B]-3 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 Term 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 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, with respect to the Series 2022[B]-1 Bonds, at the close of business on the 15th day of the Month immediately preceding the Month in which such Interest Payment Date falls, or, with respect to the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, the Business Day immediately preceding such Interest Payment Date (the “*Regular Record Date*”).

Any interest on any Bond which 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 and approved in writing by 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. Thereupon the Bond Registrar will then fix a Special Record Date for the payment of such Defaulted Interest which will 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 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, 205[_____] are required to be tendered for purchase on [_____] 1, 202[_____] (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 Issuer 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 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 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 any Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) 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 current Reset Period prior to a 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 2022[B]-1 Bonds. The Series 2022[B]-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 [____], 202[] 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 2022[B]-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 2022[B]-1 Bond or the Initial Mandatory

* Preliminary; subject to change.

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 2022[B]-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 2022[B]-1 Bonds maturing on or after the Initial 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 [____], 202[] at a Redemption Price selected by CCCFA, 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 2022[B]-1 Bonds to be redeemed), as follows:

REDEMPTION PERIOD (DATES INCLUSIVE)	REDEMPTION PRICE	
	202[] MATURITY	205[] MATURITY
[] to []		
[] to []		
[] to []		

in each case plus accrued and unpaid interest to the date of redemption.

In lieu of redeeming the Series 2022[B]-1 Bonds pursuant to the Indenture, the Trustee may, upon the Written Direction of CCCFA, use such funds as may be available by CCCFA or as are otherwise available under the Indenture to purchase such Series 2022[B]-1 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022[B]-1 Bonds. Any Series 2022[B]-1 Bonds so purchased may be remarketed in a new Interest Rate Period or may be cancelled by the Trustee, in either case as set forth in the Written Direction of the Issuer.

The “*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 Refinitiv Global Markets, Inc. (“Refinitiv”) at least one Business Day and not more than fifteen Business Days prior to the date that notice of redemption is required to be given pursuant to the Indenture. 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 Refinitiv and is available to its subscribers through the internet address: www.tm3.com. In calculating the Applicable Tax-Exempt Municipal Bond Rate, should Refinitiv 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 Analytics 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.

"Amortized Value" means, with respect to Series 2022[B]-1 Bond to be redeemed during the Initial Interest Rate Period, the principal amount of such Series 2022[B]-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 prevailed on the date such Series 2022[B]-1 Bond began to bear interest at its current Term Rate), with a delivery date equal to the date of redemption of such Series 2022[B]-1 Bond, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date and a yield equal to such Series 2022[B]-1 Bond's original reoffering yield on the date such Series 2022[B]-1 Bond began to bear interest at its current Term Rate (as set forth on the inside cover page of this Official Statement) which, in the case of the initial Term Rate Period for the Series 2022[B]-1 Bonds and certain dates, produces the amounts for all of the Series 2022[B]-1 Bonds set forth in the Indenture, *provided that* in the case of an optional redemption of the Series 2022[B]-1 Bonds on or after[____], 202[___], the Amortized Value shall be determined as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2022[B]-1 Bonds to be redeemed). The Amortized Value of the Bonds as of certain dates during the Initial Interest Rate Period is shown on Appendix H.

Optional Redemption of Index Rate Bonds. The Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds are subject to optional redemption by CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and at random within a maturity), on any day on or after the first day of the third month preceding the Initial Mandatory Purchase Date for the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, as applicable, 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. In lieu of redeeming the Series 2022[B]-2 Bonds or Series 2022[B]-3 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of CCCFA, use such funds as may be available by CCCFA or as are otherwise available under the Indenture to purchase such Series 2022[B]-2 Bonds or Series 2022[B]-3 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022[B]-2 Bonds or Series 2022[B]-3 Bonds, as applicable. Any Series 2022[B]-2 Bonds and Series 2022[B]-3 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 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: (a) in the case of the Series 2022[B]-1 Bonds, the Amortized Value thereof, and (b) in the case of the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, 100% of the principal amount thereof, plus, in each case, 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 give notice, in the name of CCCFA, 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, not less than 15 days prior to the redemption date in the case of an extraordinary mandatory redemption described above, not less than 30 days prior to the redemption date in the case of mandatory sinking fund redemption or optional redemption of the Series 2022[B]-1 Bonds, and not less than 15 days prior to the redemption date in the case of mandatory sinking fund redemption or optional redemption of the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds.

Each notice of redemption must identify the Bonds to be redeemed and must 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. 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 Bonds.

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 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 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 and the Bonds shall be purchased pursuant to the provisions of the Indenture relating to mandatory tender on such Mandatory Purchase Date rather than redeemed.

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 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 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 money is 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 money was 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 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 series, tenor and maturity are called for redemption, the particular Bonds or portions of Bonds of such series, tenor and maturity to be redeemed must be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds of such series, tenor and maturity 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.

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 G — “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 [_____] 1, 205[_____] that is payable on the Mandatory Purchase Date ([_____] 1, 202[_____]*)¹.

YEAR ENDING [_____] 1	PRINCIPAL AMOUNT	INTEREST	TOTAL

* Preliminary; subject to change.

TOTAL

¹. 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

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 3.5 million MWh and is subject to change as described below under the heading “*Aggregate Quantity*”.

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 Agreement (an “*Assigned Delivery Point*”). Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Agreement. At the start of the Delivery Period, the Project Participant will assign the Initially Assigned PPA, 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 Participant under the Power Supply Contract. The aggregate average monthly quantity of Prepaid Energy to be delivered under the Prepaid Energy Sales Agreement during the Initial Reset Period is approximately 55,718 MWh. The average monthly quantity of electricity is preliminary and subject to adjustment at the time of the sale of the Bonds, based upon the amount of proceeds received by CCCFA.

Assignment of Power Purchase Agreements

The Project Participant has assigned its Initial Assigned Rights and Obligations to the Energy Supplier. The Assigned Energy during the Initial EPS Energy Periods will be delivered from a portfolio of carbon free resources that includes large hydroelectric facilities located in Washington State and Idaho as well as generation from wind farms located in Washington State and Montana. The Initially Assigned PPA allows for MSCG to add additional carbon free resources, upon written notice to the Project Participant in order to meet the guaranteed minimum delivery obligations thereunder.

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 “— *Energy Remarketing.*”

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 Contract Index Price for such portion of Base Energy.

The “Contract Index 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 is 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, CCCFA will be deemed to have requested for the Energy Supplier to remarket the portion of the Assigned Quantities not delivered and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable index price (or the applicable fixed price with respect to Assigned Energy otherwise intended to be delivered to SVCE during the Initial EPS Energy Period). Any such remarketing will be treated as a purchase by the Energy Supplier for its own account and will constitute a private-business use sale, and the 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.

In the event of any expiration or termination of an Assigned PPA, the 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 (i) the Project Participant exercises Commercially Reasonable Efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract and (ii) the Project Participant is not in default under its Power Supply Contract, then:

- MSES shall be obligated remarket Base Energy and purchase such Base Energy for its own account at the applicable index price;
- the Project Participant shall be obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of energy; and
- 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.

To the extent that the Project Participant (i) has not exercised commercially reasonable efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract, (ii) is in default under its Power Supply Contract or (iii) has experienced a loss of Energy load such that it has insufficient demand for Prepaid Quantities, then:

- 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; and
- 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 remarketed 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 energy 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 Contract 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 and to include any declaration of force majeure by a PPA Seller. Excuses to performance include 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 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 the 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.

CCCFA has certain rights to cause MSES to novate the Prepaid Energy Sales Agreement as of the commencement of a new Reset Period. 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;
 - 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 energy or CCCFA to receive energy under the Prepaid Energy Sales Agreement being prohibited or unlawful;
- or

- the Interest Rate Swap is terminated by CCCFA.

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 energy or CCCFA to receive energy under the Prepaid Energy Sales Agreement being prohibited or unlawful;
- if the Project Participant makes a Remarketing Election for a Reset Period; or
- if the Power Supply Contract has been terminated or is 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 the CCCFA Commodity Swap or the MSES Commodity Swap if the CCCFA Commodity Swap is terminated for any reason or termination occurs automatically under the CCCFA Commodity Swap as a result of an event of default or a termination event thereunder;
- the failure to replace, within 120 days, the MSES Commodity Swap or the CCCFA Commodity Swap if the MSES Commodity Swap is terminated for any reason or termination occurs automatically under the MSES Commodity Swap as a result of an event of default or a termination event thereunder;
- designation by MSES of an early termination date under the Interest Rate Swap;
- 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 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 as of the end of the Initial Reset Period or the then-current Reset Period 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

Participant under the Power Supply Contract (the “*Put Receivables*”). CCCFA is required to sell and MSES is required to purchase Put Receivables under the circumstances described below under “*Put 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 equal to the amount of the non-payment by such 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*”).

THE INTEREST RATE SWAP

General

With respect to any Index Rate Bonds that are issued, CCCFA will enter into the Interest Rate Swap in order to hedge its exposure to interest rate fluctuations on such Index Rate Bonds and more closely match its payment obligations on such Index Rate Bonds with its expected Revenues from payments under the Power Supply Contract and the CCCFA Commodity Swap. The Interest Rate Swap consists of a 2002 ISDA Master Agreement, a schedule thereto and a confirmation. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period.

Payments Under the Interest Rate Swap

Under the Interest Rate Swap, MSES, as Interest Rate Swap Counterparty, is obligated to pay CCCFA on the Business Day preceding each Interest Payment Date floating amounts equal to the amount of interest due on the Index Rate Bonds on such Interest Payment Date, and CCCFA is obligated to pay the Interest Rate Swap Counterparty fixed amounts calculated using a fixed rate and notional amounts equal to the principal amount of Index Rate Bonds then Outstanding.

Interest Rate Swap Receipts received by CCCFA are deposited directly into the Debt Service Account. Interest Rate Swap Payments owed by CCCFA are payable from amounts on deposit in the Debt Service Account. Neither party will be obligated to make any payment (other than accrued and unpaid amounts) under the Interest Rate Swap upon early termination thereof.

Events of Default and Termination Events under the Interest Rate Swap

The Interest Rate Swap contains standard Events of Default and Termination Events set forth in the form of the 2002 ISDA Master Agreement (Multicurrency-Cross Border) published by the International Swap Dealers Association, Inc. (available at www.isda.org), subject to such modifications contained in the Schedule to such ISDA Master Agreement as are generally applied to municipal counterparties.

The Schedule to the ISDA Master Agreement provides that certain of such Events of Default and Termination Events will not apply or provides for a modification to the remedies available upon the occurrence of such an event. The Events of Default not applicable to CCCFA are Section 5(a)(ii)(2)

(Repudiation of Agreement), Section 5(a)(iii) (Credit Support Default), Section 5(a)(v) (Default under Specified Transaction) and Section 5(a)(vi) (Cross Default), and the Termination Event not applicable to CCCFA is Section 5(b)(ii) (Force Majeure Event). Section 5(a)(ii)(2), Section 5(a)(iii), Section 5(a)(v), Section 5(a)(vi) and Section 5(b)(ii) are also not applicable to the Interest Rate Swap Counterparty. Neither CCCFA nor the Interest Rate Swap Counterparty is required to pay any termination payment or other similar amount upon an early termination of the Interest Rate Swap.

The Interest Rate Swap also contains Additional Termination Events that will occur (a) upon any amendment, supplement or modification to the Indenture that materially adversely affects the priority of or security for the Interest Rate Swap Counterparty's obligation to make payments hereunder and (b) automatically upon the occurrence of an early termination of the Prepaid Energy Sales Agreement.

THE RE-PRICING AGREEMENT

General

CCCFA and MSES will enter into the Re-Pricing Agreement which provides for determination of Interest Rate Periods for the Bonds subsequent to the Initial Interest Rate Period and the corresponding Reset Periods. The Initial Reset Period under the Prepaid Energy Sales Agreement and the Power Supply Contract begins on [_____] 1, 202[] and ends on the last day of [_____] 202[]*. The Initial Reset Period under the Prepaid Energy Sales Agreement ends one month before the end of the Initial Interest Rate Period, and each subsequent Reset Period will end one month before the end of the corresponding Interest Rate Period.

The debt service requirements on the Bonds for each Reset Period will not be known until the interest rate on the Bonds has been determined for such Reset Period. The Power Supply Contract includes provisions for the adjustment of the Energy sales price for each Reset Period so as to provide Revenues sufficient to enable CCCFA to meet the debt service requirements on the Bonds during each Reset Period. Accordingly, the Re-Pricing Agreement further provides for the calculation of the amount of the Available Discount (in US Dollars per MWh) for sales of Energy to the Project Participant under the Power Supply Contract during each Reset Period.

In the event that the Available Discount for any Reset Period is less than the Minimum Discount specified in the Power Supply Contract (which includes both monthly discounts and any annual rebates), the Project Participant may elect not to take its contract quantities of Energy during the Reset Period, and to have such Energy remarketed 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 remarketed in accordance with the provisions of the Indenture and the Prepaid Energy Sales Agreement. In the event that the Project Participant makes Remarketing Elections with respect the Energy to be delivered during a Reset Period, MSES will have the right to terminate the Prepaid Energy Sales Agreement by notice to CCCFA. See "THE PREPAID ENERGY SALES AGREEMENT—*Energy Remarketing*" and "*Termination*".

* Preliminary; subject to change.

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. 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 MSES Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees described herein.

MSCG. MSCG is an indirect, 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. 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, "A-" 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 MSES 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 CONTRACT

General

Under the 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.

The 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 Participant, see APPENDIX A.

Pricing Provisions

Contract Price. For each MWh of Prepaid Energy delivered to the Project Participant, the Project Participant shall pay CCCFA the applicable Contract Price. The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products. The “*Contract Price*” is the Day-Ahead Price minus the Monthly Discount during the Initial EPS Energy Period and thereafter the Day-Ahead Average Price for the Month in which Energy is delivered minus the Monthly Discount.

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, not less than the Contract Price. See “THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*”.

Through the Clean Energy Project, the Project Participant anticipates realizing a discount to existing fixed contract prices or to market Energy prices. No assurance can be given as to the total actual discount the Project Participant will realize.

Project Administration Fee

Under the Power Supply Contract, the Project Participant is required to pay to CCCFA annually a Project Administration Fee in an amount equal to the Operating Expenses budgeted by CCCFA for the coming year, and to pay such additional amounts as and when required in the event amounts on deposit in the Administrative Fee Fund are at any time insufficient to Operating Expenses then due or which have accrued and will become payable prior to the next annual payment date of the Project Administration Fee. The Project Administration Fee and such other amounts are payable to the Trustee on behalf of CCCFA and required to be deposited in the Administrative Fee Fund and applied by the Trustee to pay Operating Expenses upon receipt of an invoice therefor from CCCFA.

Assignment of Power Purchase Agreements

General. Concurrently with the execution of its Power Supply Contract, the Project Participant will assign the Initial Assigned Rights and Obligations to the Energy Supplier for delivery under the Prepaid Energy Sales Agreement.

Commencing six months 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, the Project Participant shall exercise Commercially Reasonable Efforts to assign the Assigned Rights and Obligations under one or more Assigned PPAs, subject to MSCG’s consent thereto, 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. See “THE CLEAN ENERGY PROJECT - Assignment of Power Purchase Agreements by the Project Participant”.

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. See “THE PREPAID ENERGY SALES AGREEMENT – Energy Remarketing” and “THE POWER SUPPLY CONTRACT – Remarketing of Energy”.

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 the 20th day of the month following the month of delivery (or if such day 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 purchased 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 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 Qualifying Use Requirements. The Project Participant further agrees to provide monthly 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 MSES under the Prepaid Energy Sales Agreement.

Priority Energy. The Project Participant agrees to purchase and receive the Base Energy and Assigned Quantities to be delivered under its 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 (a) Base Energy and Assigned Quantities, and (b) other Energy that the Project Participant is obligated to take under a long-term agreement that is purchased with or generated using capacity that was constructed using the proceeds of tax-exempt bonds, notes, or other obligations.

Delivery Points; Title and Risk of Loss

Assigned 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 Agreement. 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 Agreement.

Title. Title to and risk of loss of the Prepaid Energy delivered under each 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 the Project Participant for reasons other than force majeure, the remarketing provisions of the Prepaid Energy Sales Agreement shall apply. See “THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*”. Neither the Project

Participant nor CCCFA has any liability to one another for any failure to take or deliver Assigned Energy, except as described in this section under “— *Assignment of Power Purchase Agreements.*”

Remarketing of Energy

In the event the Project Participant does not require all or any portion of its contract quantity 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 as required under the Prepaid Energy Sales Agreement. 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; and
- (b) The insolvency or bankruptcy of the Project Participant.

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 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

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 (Silicon Valley Clean Energy Authority), East Bay Community Energy Authority, Marin Clean Energy and Central Coast Community 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 electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity 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; and

(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. The Board has not appointed a General Manager or Assistant General Manager. CCCFA’s current management team consists of Garth Salisbury as Treasurer/Controller and Michael Callahan as General Counsel.

Other CCCFA Projects

[CCCFA issued its initial series of bonds on September 23, 2021 to purchase prepaid electricity from Morgan Stanley Energy Structuring, L.L.C., which is delivered to its Members, East Bay Community Energy and Silicon Valley Clean Energy, and another series of bonds on November 24, 2021, under a separate bond indenture to purchase prepaid electricity from J. Aron & Company LLC, which is delivered to its Member, Marin Clean Energy.][to be updated]

CCCFA may issue future bonds to purchase prepaid electricity 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 electricity on a prepaid basis for sale to other community choice aggregators. 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, PREVIOUS BONDS ISSUED BY CCCFA, ANY FUTURE BONDS THAT MAY BE ISSUED BY CCCFA AND ANY FUTURE CONTRACTS THAT CCCFA MAY ENTER INTO TO ACQUIRE ADDITIONAL ENERGY OR ELECTRICITY 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

General

The Project Participant is a “community choice aggregator” pursuant to Section 331.1 of the Public Utilities Code (a “CCA”). See APPENDIX A for information with respect to the Project Participant.

Establishment of Community Choice Aggregators

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.

Customer Participation and Opt-out Rights

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

CCCFA Commodity Swap

CCCFA has entered into the CCCFA Commodity Swap under which CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for the notional quantities specified in the CCCFA Commodity Swap for each month of such term.

Under the CCCFA Commodity Swap, for each calendar month that the relevant floating price of Energy is greater than the fixed price specified in a 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 Swap.

MSES Commodity Swap

The Energy Supplier has entered into a comparable MSES 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. The Energy Supplier’s payment obligations to the Commodity Swap Counterparty under the MSES Commodity Swap will be guaranteed under the Morgan Stanley Commodity Swap Guarantee.

Form of Commodity Swaps and Term

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. 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 an early termination date occurs under the Commodity Swaps.

Payment

For each month of scheduled deliveries and notional amounts, 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 on the 25th day of the month (or next Business Day) the calendar month following the month to which the applicable day-ahead market prices relate.

Early Termination

General. Each of the Commodity Swaps will be subject to early termination under certain circumstances. This early termination can be triggered automatically or upon the election by the non-defaulting party as described below. No settlement or other termination payment (other than previously accrued amounts) would be due to any party as a result of any early termination of either Commodity Swap, except that MSES agrees to pay a make-whole amount equal to the discounted present value of the fee the Commodity Swap Counterparty would have received for the remainder of the then-current Reset Period if the MSES Commodity Swap is terminated for certain reasons.

Automatic Termination of Both Commodity Swaps. The termination of the Prepaid Energy Sales Agreement for any reason would result in the automatic termination of both the CCCFA Commodity Swap and the MSES Commodity Swap; provided that, in the case of certain termination events for which MSES is the defaulting party under the Prepaid Energy Sales Agreement, MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a make-whole amount equal to the discounted present value of the fee the Commodity Swap Counterparty would have received in the then-current Reset Period (a “*Termination Fee*”).

Automatic Termination of the CCCFA Commodity Swap. MSES’s delivery of notice designating an early termination date under the MSES Commodity Swap results in the automatic termination of the CCCFA Commodity Swap.

Elective Termination of the CCCFA Commodity Swap. Each of the following events of default and termination events would provide the non-defaulting party or the non-affected party (or, in the case of tax indemnification, the party required to make an additional payment or receive a reduced payment) the right to terminate the CCCFA Commodity Swap if it is not cured within the applicable cure period:

- the affected party’s failure to pay amounts due to the other party under the CCCFA Commodity Swap (notwithstanding any payment from the Custodian to CCCFA under the MSES Custodial Agreement following the Commodity Swap Counterparty’s failure to pay any amounts when due) if such party’s failure is not remedied (a) in the case of CCCFA’s failure to pay, on or before the 120th day after notice of such failure is given to CCCFA (*provided, however*, if CCCFA has rights to sell sufficient Put Receivables to avoid such payment failure and did not, for any reason, receive payment for sufficient Put Receivables to avoid such payment failure, then on the third Business Day after notice of such failure is given to CCCFA), or (b) in the case of the Commodity Swap Counterparty’s failure to pay on or before the third Business Day after notice of such failure is given to the Commodity Swap Counterparty;
- a representation made by the defaulting party proves to have been incorrect or misleading in any material respect;
- if a party becomes subject to certain insolvency events;

- if the defaulting party or its credit support provider participates in a merger or similar business combination (or, additionally, if such party is CCCFA, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, CCCFA) and (a) the surviving entity does not assume the obligations of such party or its credit support provider under the CCCFA Commodity Swap, (b) the benefits of any credit support document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under the CCCFA Commodity Swap, or (c) in the case of CCCFA, the Trust Estate is no longer available for the satisfaction of such surviving entity's obligations to the Commodity Swap Counterparty under the CCCFA Commodity Swap;
- if performance or receipt of performance of the CCCFA Commodity Swap becomes illegal for either party, such party would have the right to terminate the CCCFA Commodity Swap;
- if a party becomes (or parties become) obligated to pay additional tax indemnification amounts or will receive payments that are lessened by tax indemnification amounts because of changed laws or corporate changes, including by way of merger or similar business combination, to a party, the party or parties impacted by the need for such additional payments or the receipt of reduced payments will have the right to terminate the CCCFA Commodity Swap unless the other party agrees to waive such indemnification requirement for increased payments or indemnifies the party for any reduced payments;
- if the affected party participates in a merger or similar business combination and the creditworthiness of the surviving entity is materially weaker than the original party;
- (a) any withdrawal of the Commodity Swap Counterparty's Credit Rating or (b) any reduction in the Commodity Swap Counterparty's Credit Rating below "Baa3" by Moody's or below "BBB-" by S&P, where "*Commodity Swap Counterparty's Credit Rating*" means the credit rating assigned by the applicable rating agency to the Commodity Swap Counterparty's senior, unsecured long-term debt obligations (not supported by third party credit enhancements);
- if certain provisions of the Prepaid Energy Sales Agreement related to termination of the Prepaid Energy Sales Agreement or the Receivables Purchase Provisions are modified without the Commodity Swap Counterparty's consent;
- CCCFA fails to promptly exercise its right to suspend all energy deliveries under a Power Supply Contract to any Project Participant that fails to pay when due any amounts owed to CCCFA thereunder; and
- if the Indenture is modified in breach of the Commodity Swap Counterparty's consent rights under the Indenture and such breach is not cured within 10 days of notice to the Commodity Swap Counterparty.

An event of default also exists for a party's failure to comply with or perform any agreement or obligation under the CCCFA Commodity Swap other than payment obligations, except that such event does not give the non-defaulting party the right to designate an early termination date pursuant to the CCCFA Commodity Swap or to assert a claim for monetary damages as a result of such event of default. Such an event of default permits the non-defaulting party to pursue such equitable remedies, including specific performance, as may be available to it.

Elective Termination of the MSES Commodity Swap. Each of the following events of default or termination events would provide the non-defaulting or non-affected party (or, in the case of tax indemnification, the party required to make an additional payment or receive a reduced payment) the right to terminate the MSES Commodity Swap if it is not cured within the applicable cure period:

- the defaulting party's failure to pay amounts due to the other party under the MSES Commodity Swap if such failure is not remedied within three Business Days after notice of such failure is given to such party;
- the defaulting party's failure to comply with or perform any agreement or obligation under the MSES Commodity Swap other than payment obligations;
- if MSES, the Commodity Swap Counterparty or Morgan Stanley fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the Credit Support Annex executed as part of the MSES Commodity Swap or the Morgan Stanley Commodity Swap Guarantee, as applicable (each of the Credit Support Annex and Morgan Stanley Commodity Swap Guarantee, a "*Credit Support Document*"), or the expiration or termination of a Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect (in either case other than in accordance with their terms) prior to the satisfaction of all obligations of such party under the MSES Commodity Swap without the written consent of the other party, or MSES, the Commodity Swap Counterparty or Morgan Stanley disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any such Credit Support Document;
- a representation made by the defaulting party proves to have been incorrect or misleading in any material respect;
- subject to a threshold, any payment default or default which results in acceleration of indebtedness by the defaulting party on any indebtedness but (a) excluding with respect to Commodity Swap Counterparty deposits received in the ordinary course of banking business the repayment of which is being disputed in good faith or contested by governmental action, and (b) including MSES's obligations under the Receivables Purchase Provisions to purchase Put Receivables;
- if a party becomes subject to certain insolvency events;
- if the defaulting party participates in a merger or similar business combination and the surviving entity does not assume the obligations under the MSES Commodity Swap, or the

benefits of a credit support document fail to extend to the performance of the defaulting party under the MSES Commodity Swap;

- if performance or receipt of performance of the MSES Commodity Swap becomes illegal for either party, such party would have the right to terminate the MSES Commodity Swap;
- if a party becomes (or parties become) obligated to pay additional tax indemnification or will receive payments that are lessened by tax indemnification amounts because of changed laws or corporate changes, including by way of merger or similar business combination, to a party, the party or parties impacted by the need for such additional payments or the receipt of reduced payments will have the right to terminate the MSES Commodity Swap unless the other party agrees to waive such indemnification requirement for increased payments or indemnifies the party for any reduced payments;
- if the affected party participates in a merger or similar business combination and the creditworthiness of the surviving entity is materially weaker than the creditworthiness of the original party;
- (a) any withdrawal of the Commodity Swap Counterparty's Credit Rating or (b) any reduction in the Commodity Swap Counterparty's Credit Rating below "Baa3" by Moody's or below "BBB-" by S&P, with "Commodity Swap Counterparty's Credit Rating" having the meaning described above under *"Elective Termination of the CCCFA Commodity Swap"*;
- if certain provisions of the Prepaid Energy Sales Agreement related to termination of the Prepaid Energy Sales Agreement or the Receivables Purchase Provisions are modified without the Commodity Swap Counterparty's consent, provided that, in such case MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee;
- MSES may at its election deliver a notice of termination designating an early termination date under the MSES Commodity Swap, subject to the condition that the CCCFA Commodity Swap must terminate effective as of the same date (provided that, if no other Event of Default or Termination Event has occurred with respect to the Commodity Swap Counterparty, then MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee); and
- if the rights and obligations of MSES under the Prepaid Energy Sales Agreement are assigned to another entity and such entity's obligations under the Prepaid Energy Sales Agreement are not guaranteed by a Morgan Stanley guarantee, unless either (a) the Commodity Swap Counterparty consents to such assignment or (b) all of MSES's rights and obligations under the MSES Commodity Swap are assigned and novated to another entity pursuant to the MSES Commodity Swap; provided that, in the case of a termination due to an assignment that fails to comply with the foregoing requirements, MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee. See "THE PREPAID ENERGY SALES AGREEMENT—*Assignment*" above.

Custodial Agreements

The Energy Supplier will enter into a Custodial Agreement (the “*Energy Supplier Custodial Agreement*”), with the Commodity Swap Counterparty and The Bank of New York Mellon Trust Company, N.A., as Trustee and as custodian (in such capacity, the “*Custodian*”), to administer payments under the MSES Commodity Swaps. CCCFA will enter into a Custodial Agreement, dated as of the initial issue date of the Bonds (the “*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 MSES Commodity Swap.

Payments made by the Energy Supplier under the MSES 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 a 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 MSES 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 MSES Commodity Swap terminates, the Energy Supplier will continue to make payments to the custodial account as if such MSES 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 MSES Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under the MSES 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.

[description to come]

The foregoing information regarding the Commodity Swap Counterparty has been obtained from sources CCCFA believes to be reliable, but CCCFA assumes no responsibility for the content thereof.

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 previously entered into continuing disclosure undertakings 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.

During the five-year period preceding the date of this Official Statement, CCCFA has determined that certain financial information relating to the Project Participant for its fiscal year ending June 30, 2021 was filed late. CCCFA subsequently filed such information on the Municipal Securities Rulemaking Board Electronic Municipal Market Access System. CCCFA has engaged BLX Group to assist with its continuing disclosure obligations.

Project Participant. Pursuant to the Power Supply Contract, the Project Participant has agreed to provide to CCCFA certain annual operating and financial information, which information will enable CCCFA to comply with the Undertaking. Failure of the 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 Swap, the Receivables Purchase Provisions, the Investment Agreements, the Custodial Agreements, the Indenture, or the pledge of the Trust Estate under the Indenture.

The Project Participant reports that there is no litigation pending or, to its knowledge, threatened against it questioning or in any manner affecting the validity or enforceability of the Power Supply Contract.

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 December 31, 2021, on the MSRB’s EMMA system described above.

FINANCIAL ADVISOR

PFM Financial Advisors LLC (the “*Financial Advisor*”) has served as financial advisor to CCCFA in connection with the 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 Swap and the Interest Rate Swap. 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 MSES 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 MSES 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 MSES 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 relating to the Morgan Stanley Guarantees set forth under the captions “INTRODUCTION—*Morgan Stanley*

Guarantees”, “THE PREPAID ENERGY SALES AGREEMENT—*Security*”, “THE INTEREST RATE SWAP—*Morgan Stanley Guarantee*” and “THE COMMODITY SWAPS—*The MSES Commodity Swap*” and under the heading “THE ENERGY SUPPLIER AND MORGAN STANLEY”.

RATING

Moody’s Investors Service, Inc. assigned a municipal bond rating of “A1” 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 Ballard Spahr 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 E 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 exempt from 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 bonds, like the 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, 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.

Payments on the Bonds generally will be subject to U.S. information reporting and possibly to "backup withholding." Under Section 3406 of the Code and applicable U.S. Treasury Regulations issued thereunder, a non-corporate Beneficial Owner of Bonds may be subject to backup withholding with respect to "reportable payments," which include interest paid on the Bonds and the gross proceeds of a sale, exchange, redemption, retirement or other disposition of the Bonds. The payor will be required to deduct and withhold the prescribed amounts if (i) the payee fails to furnish a U.S. taxpayer identification number ("TIN") to the payor in the manner required, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has been a "notified payee underreporting" described in Section 3406(c) of the Code or (iv) the payee fails to certify under penalty of perjury that the payee is not subject to withholding under Section 3406(a)(1)(C) of the Code. Amounts withheld under the backup withholding rules may be refunded or credited against a Beneficial Owner's federal income tax liability, if any, provided that the required information is timely furnished to the IRS. Certain Beneficial Owners (including among others, corporations and certain tax-exempt organizations) are not subject to backup withholding. The failure to comply with the backup withholding rules may result in the imposition of penalties by the IRS.

APPROVAL OF LEGAL MATTERS

The validity of the Bonds and certain other legal matters are subject to the approving opinion of Ballard Spahr 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 Ballard Spahr LLP; for the Project Participant by Chapman and Cutler LLP; for the Energy Supplier by its counsel, Haynes and Boone, LLP; and for the Underwriter by Nixon Peabody LLP.

CCCFA will receive an opinion from counsel to the Project Participant on the date of original delivery of the Bonds, to the effect that the Power Supply Contract of the 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: _____
Chair

APPENDIX A
THE PROJECT PARTICIPANT
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 carbon free 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

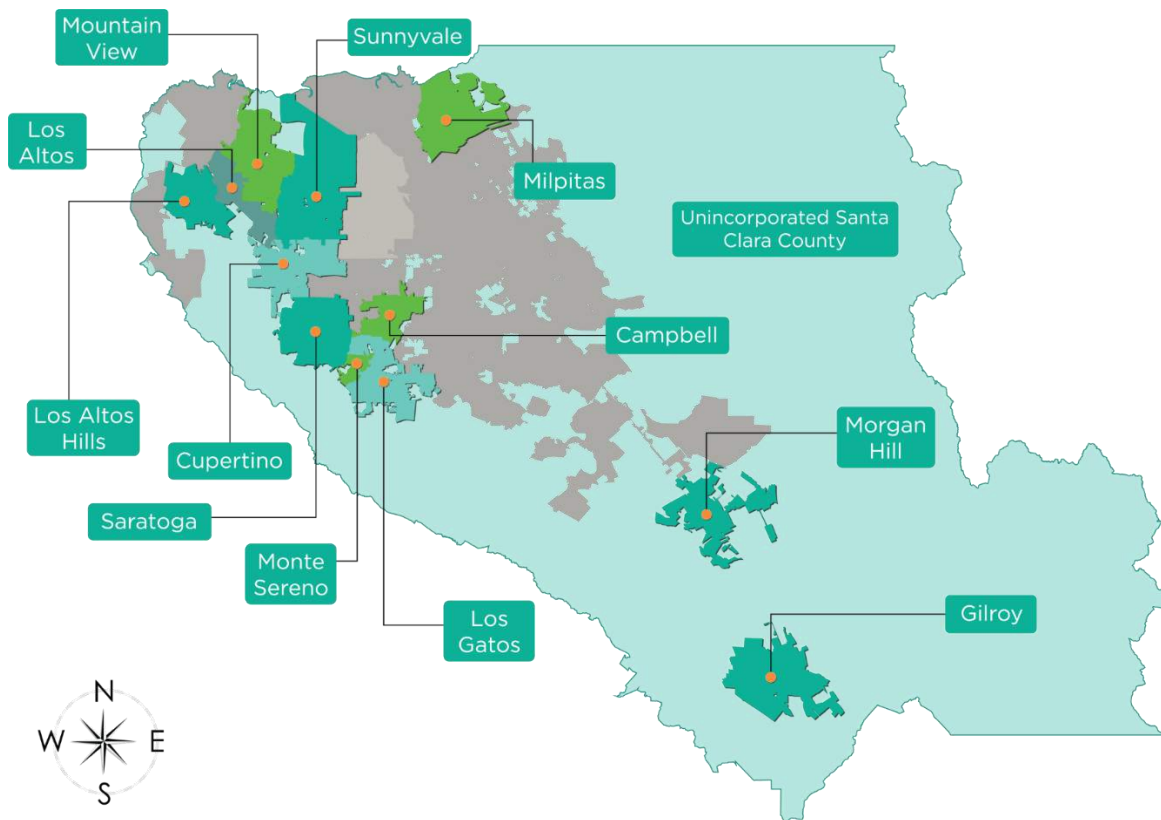
Communities Served by SVCE. SVCE currently serves 13 jurisdictions in Santa Clara County, as follows:

City of Campbell	City of Cupertino	City of Gilroy
City of Los Altos	Town of Los Altos Hills	Town of Los Gatos
City of Milpitas	City of Monte Sereno	City of Morgan Hill

City of Mountain View City of Saratoga
Unincorporated County of Santa Clara

City of Sunnyvale

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 30 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, Chief Operating Officer and Director of Power Resources. As the Chief Operating Officer and 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 eight solar plus storage contracts and several other contracts for geothermal, wind and solar. 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 Strategic Development. Don has worked with SVCE since its inception. He is focused on strategic initiatives involving the development of new customer offerings, marketplace partnerships, and operational capabilities. Previously, Don worked as SCVE's Director of Energy Services and Community Relations, responsible for leading customer engagement activities with major commercial and industrial accounts, customer service operations, rates, program deployment, marketing and communications. Prior to SCVE, 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. 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. Within the community, Don helped define and launch the Bay Area Climate Collaborative, a region-wide public-private partnership addressing regional sustainability goals. In his hometown of Los Altos, California, he served for 10 years on the City's Environmental Commission, including as Chair and Vice-Chair. 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.

Adam Selvin, Director of Energy Services and Community Relations: As Director of Energy Services and Community Relations, Adam leads a team responsible for marketing, communications, electricity services, and customer relations strategic planning and implementation. Adam brings more than 20 years of energy industry experience, including all aspects of demand-side management services for commercial and industrial (C&I) customers, utility performance, and customer experience improvements.

Prior to joining Silicon Valley Clean Energy, Adam led CLEAResult's Commercial and Industrial practice and held a variety of roles with Pacific Gas & Electric Co. Adam has a Master of Business Administration from University of California Berkeley's Haas School of Business and a Bachelor of Science in Mechanical Engineering from San Francisco State University. He is also a Professional Mechanical Engineer (PE) and Certified Energy Manager (CEM).

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 none of them individually represents more than 3-4% of overall load.

Customer Energy Choices. SVCE offers two different choices of energy service, referred to as GreenStart and GreenPrime. In 2021, customers receiving GreenStart service are provided with a minimum of 44% renewable energy, sourced from a mix of wind, geothermal, solar, small hydro and biomass/biowaste, with 36% coming from large hydroelectric facilities, and the final 20% from nuclear power. Customers electing to receive GreenPrime service are provided with 100% renewable energy from solar sources.

Customer Enrollment. All customers are automatically enrolled in GreenStart and may change their product after enrollment. Currently, approximately 98.8% of SVCE customers receive GreenStart service, with the remaining approximately 1.2% receiving GreenPrime service. Due to commercial enrollments, GreenPrime customers represent a slightly higher percentage in terms of load (3.5%).

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 on SVCE's revenues.

Cumulative Opt-Out Rate and Customer Retention. Overall, opt-out rates have remained stable declining from 4.5% to 3.5% 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 currently 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.

SVCE has priced its generation rate, inclusive of PCIA, below PG&E's comparable generation rate since the organization's initial enrollments. 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 rate. SVCE strives to maintain this value as a customer retention tool. Given the nature of an opt-out energy program, there are no assurances that customers will continue service should SVCE's bundled costs become 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.

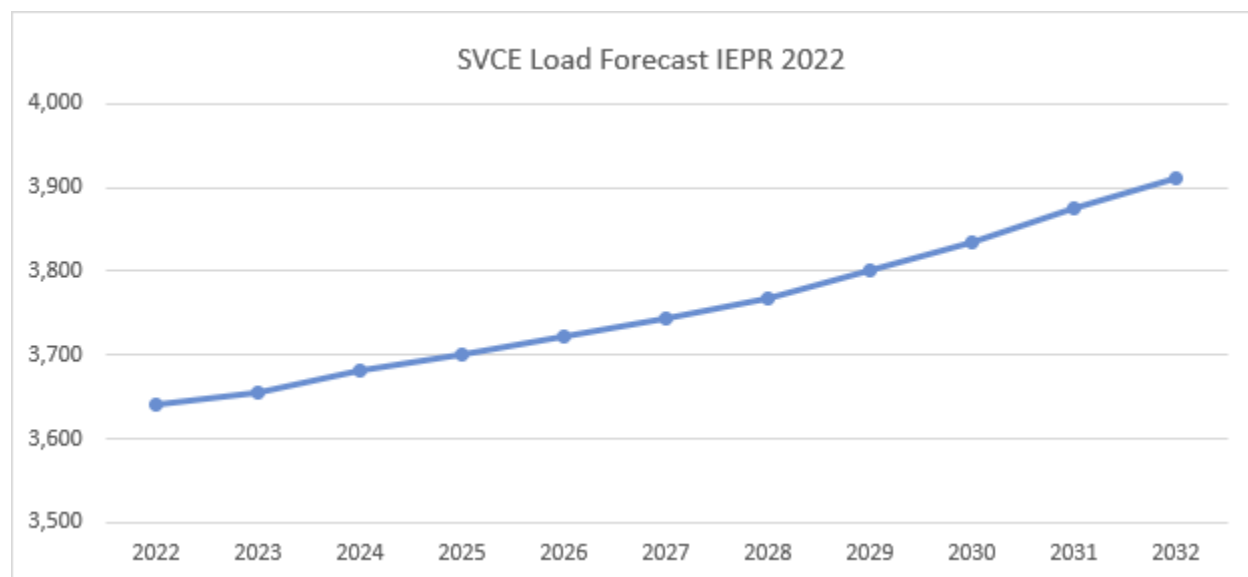
Resource Adequacy. Resource Adequacy ("RA"), a California program jointly administered by the CPUC, the CEC and CAISO, directs LSEs to secure forward capacity and offer it into the CAISO's Day-Ahead and Real-Time markets to ensure that there will be enough supply in the right locations and with sufficient 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.



*Source IEPR Adopted Numbers 2022

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 2021, SVCE procured approximately 3.6 million MWh of electricity for its customers. SVCE anticipates that roughly 100% of its total 2022 retail sales will be sourced from carbon-free resources including renewables, large hydroelectric, and nuclear energy (primarily large hydroelectric energy from the Pacific Northwest, but also relatively small amounts of nuclear energy). SVCE’s procurement strategy through 2030 includes regularly procuring new and existing California renewables by 2030, via both short- and long-term contracts. 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 additional storage paired with solar, stand-alone storage, long-duration storage, and large hydroelectric resources.

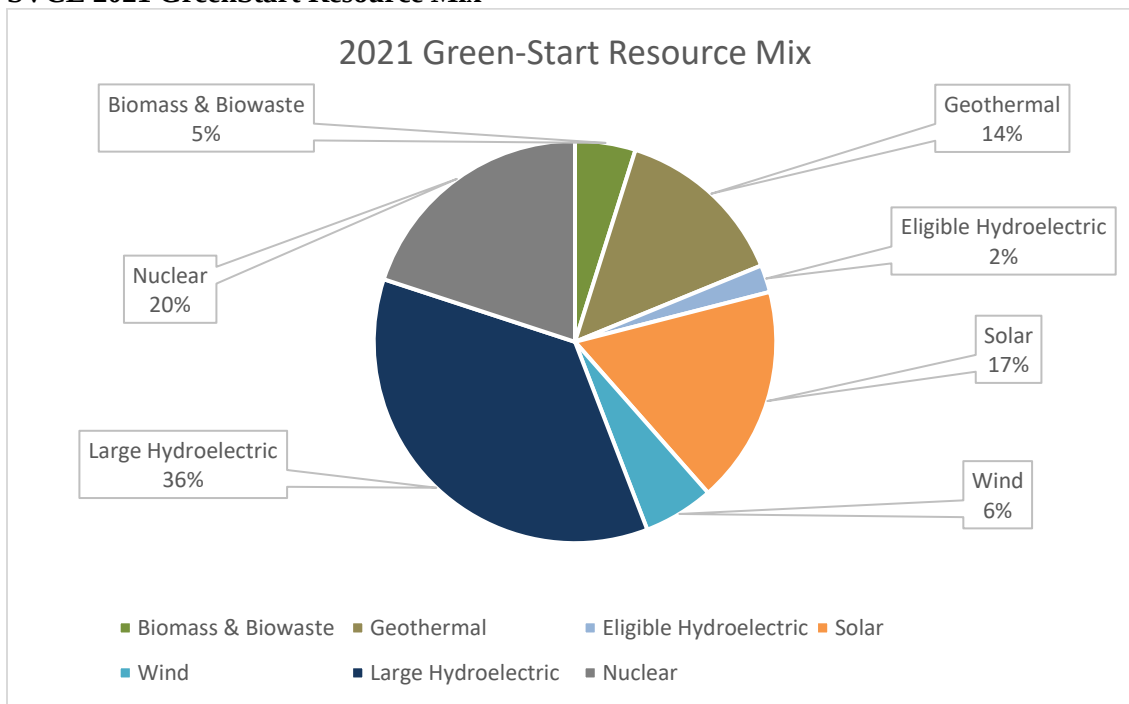
Energy Load and Supply Risk Management. SVCE continually manages its forward load obligations and supply commitments with the objective of balancing cost stability and cost minimization, while leaving some flexibility to take advantage of market opportunities or technological improvements that may arise. 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 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.

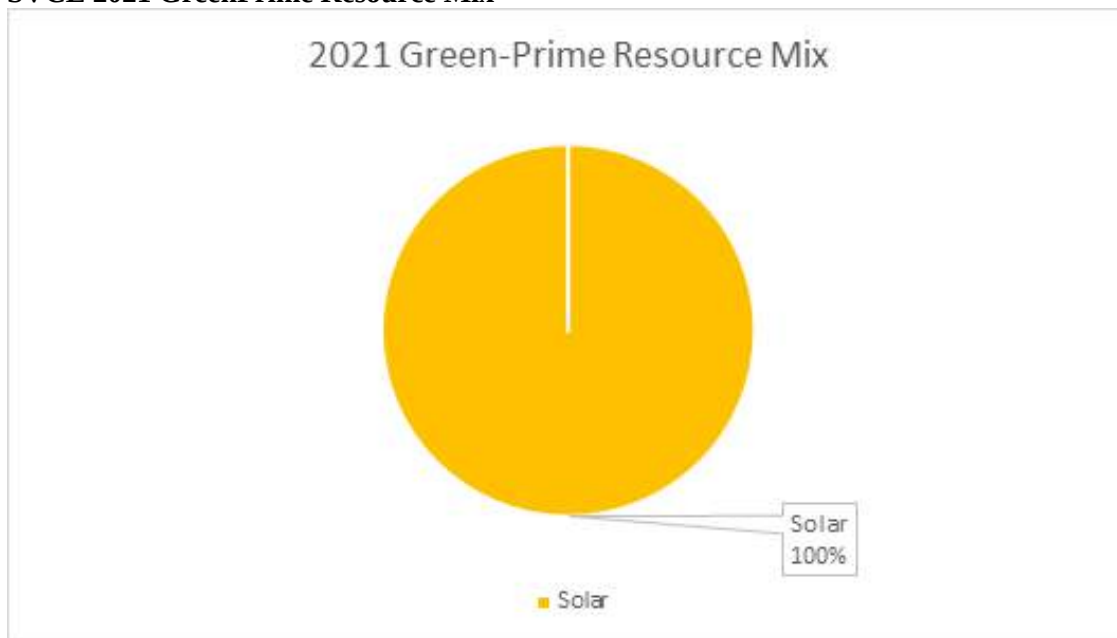
Procurement. SVCE procures energy and Resource Adequacy consistent with its Board-approved Energy Risk Management Policy. In order to effectively plan and manage its portfolio, SVCE differentiates contracts by their term length: short-term and long-term (longer than ten years). Based upon the expected 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 2021 GreenStart Resource Mix*

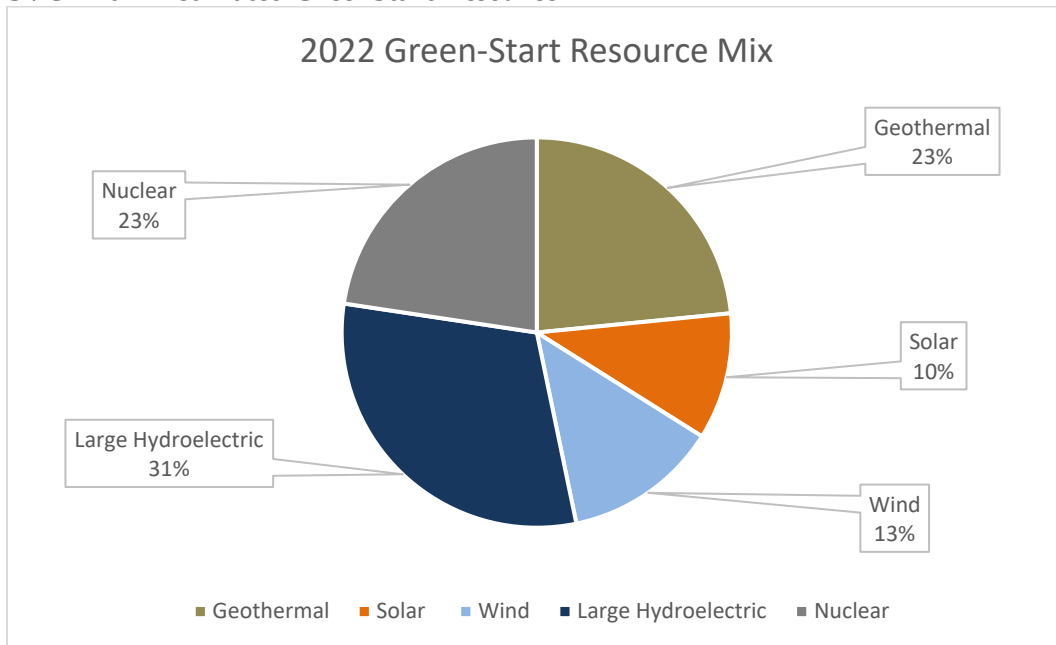


SVCE 2021 GreenPrime Resource Mix*

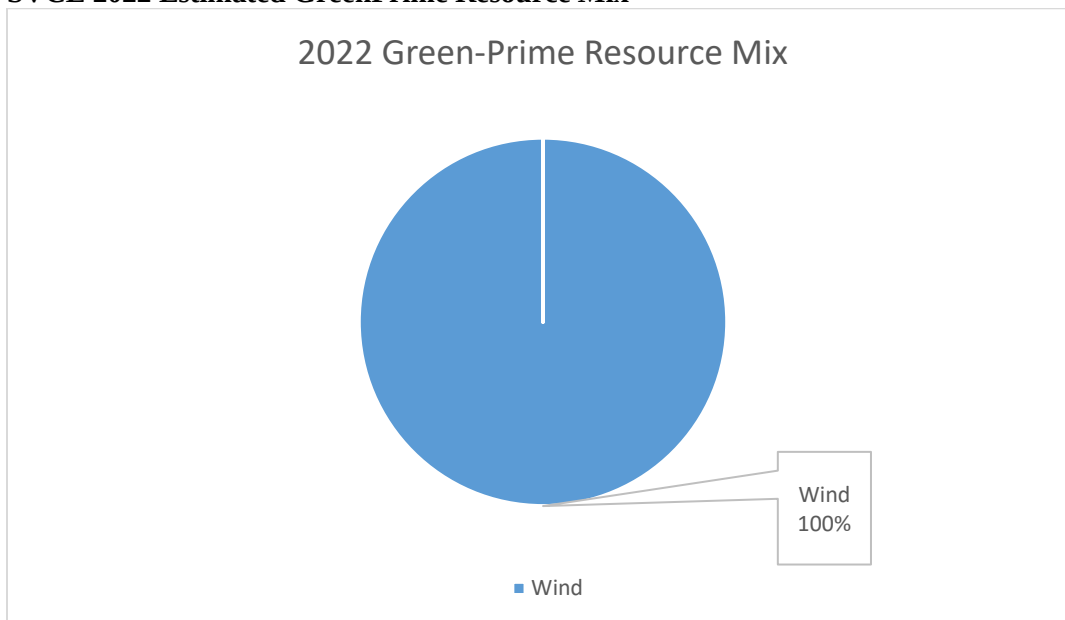


*The charts above are the energy supply that SVCE used to serve its 2021 retail sales for the GreenStart and GreenPrime product offerings

SVCE 2022 Estimated GreenStart Resource Mix*



SVCE 2022 Estimated GreenPrime Resource Mix*



*The charts directly above are estimates of the energy supply that SVCE will use to serve its 2022 retail sales for the GreenStart and GreenPrime product offerings.

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) 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 exposure to security incidents.

Energy Storage

SVCE currently has 180 MW of wholesale (*i.e.*, in front of the meter) storage capacity contracted over the course of the next twenty years. Of the 180 MW of already contracted storage capacity, 151 MW is paired with solar, and 29 MW is standalone. 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 transitioned to a hybrid work model in late 2021 and has maintained a hybrid model since that time.

Effects on Energy Load. Overall, comparing the 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 past fiscal year, SVCE write-offs have been in line with normal expectations, but SVCE continues to carry larger-than-normal customer delinquencies. 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. To date, SVCE has received \$1.2M in federal repayments from the Customer Arrearage Payment Program (CAPP) and is pursuing an additional \$700k in FY23.

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. SVCE is investigating the reinstatement of its policy of noticing and returning delinquent customers to PG&E service. This is intended to be commensurate with PG&E's reinstatement of noticing and collections for delinquent customers in Fall 2022. SVCE is currently conducting outreach throughout its communities to encourage customers to participate in a repayment plan for current charges that forgives 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:

	<u>FY 2020/21</u>	<u>FY 2019/20</u>	<u>FY 2018/19</u>	<u>FY 2017/18</u>
OPERATING REVENUES				
Electricity sales, net	\$ 241,484,417	\$ 295,515,259	\$ 291,390,036	\$ 249,204,377
GreenPrime electricity premium	\$ 1,014,531	\$ 1,315,254	\$ 1,018,493	\$ 730,235
Liquidated damages		\$ 6,600,000		
Other income	\$ 101,219	\$ 213,207	\$ 64,606	\$ 13,500
Total operating revenues	<u>\$ 242,600,167</u>	<u>\$ 303,643,720</u>	<u>\$ 292,473,135</u>	<u>\$ 249,948,112</u>
Operating Expenses				
Cost of electricity	\$ 238,586,555	\$ 251,525,916	\$ 217,237,705	\$ 189,905,958
Contract services	\$ 9,490,474	\$ 8,970,429	\$ 7,136,317	\$ 6,460,109
Staff compensation	\$ 5,474,124	\$ 4,603,241	\$ 3,399,752	\$ 2,626,639
General and administration	\$ 4,109,299	\$ 1,722,054	\$ 1,175,314	\$ 934,728
Depreciation	\$ 87,651	\$ 52,979	\$ 50,440	\$ 39,629
Total operating expenses	<u>\$ 257,748,103</u>	<u>\$ 266,874,619</u>	<u>\$ 228,999,528</u>	<u>\$ 199,967,063</u>
Operating income	<u>\$ (15,147,936)</u>	<u>\$ 36,769,101</u>	<u>\$ 63,473,607</u>	<u>\$ 49,981,049</u>
NONOPERATING REVENUE (EXPENSES)				
Interest income	\$ 273,985	\$ 1,729,841	\$ 1,230,787	\$ 153,840
Financing costs	\$ (186,951)	\$ (350,511)	\$ (144,157)	\$ (15,666)
Total nonoperating revenues (expenses), net	<u>\$ 87,034</u>	<u>\$ 1,379,330</u>	<u>\$ 1,086,630</u>	<u>\$ 138,174</u>
CHANGE IN NET POSITION				
Net position at beginning of year	\$ (15,060,902)	\$ 38,148,431	\$ 64,560,237	\$ 50,119,223
Net position at end of year	<u>\$ 181,143,388</u>	<u>\$ 142,994,957</u>	<u>\$ 78,434,720</u>	<u>\$ 28,315,497</u>
	<u>\$ 166,082,486</u>	<u>\$ 181,143,388</u>	<u>\$ 142,994,957</u>	<u>\$ 78,434,720</u>

Assets, Liabilities, Deferred Inflows or Resources and Net Position. The following table is a summary of SVCE's assets, liabilities, deferred inflows and net position for the fiscal years ending September 30:

	<u>FY 2020/21</u>	<u>FY 2019/20</u>	<u>FY 2018/19</u>	<u>FY 2017/18</u>
ASSETS				
Current assets				
Cash and cash equivalents	\$ 158,808,348	\$ 159,924,735	\$ 119,048,306	\$ 56,963,340
Accounts receivable, net of allowance	\$ 25,990,183	\$ 31,458,312	\$ 30,276,814	\$ 23,661,147
Accrued revenue	\$ 14,410,621	\$ 17,517,224	\$ 19,572,100	\$ 16,931,361
Market settlements receivable	\$ 269,012	\$ 107,318	\$ 166,657	\$ -
Other receivables	\$ 230,485	\$ 208,000	\$ 17,900	\$ 86,261
Prepaid expenses	\$ 2,378,236	\$ 2,590,546	\$ 1,333,915	\$ 1,123,847
Deposits	\$ 726,084	\$ 4,232,419	\$ 2,260,556	\$ 7,992,770
Restricted cash	\$ 4,000,216	\$ 4,500,000	\$ 5,000,000	\$ 2,000,000
Total current assets	\$ 206,813,185	\$ 220,538,554	\$ 177,676,248	\$ 108,758,726
Noncurrent assets				
Capital assets, net of depreciation	\$ 316,766	\$ 119,175	\$ 148,038	\$ 184,319
Deposits	\$ 45,330	\$ 145,130	\$ 129,060	\$ 6,192,560
Total noncurrent assets	\$ 362,096	\$ 264,305	\$ 277,098	\$ 6,376,879
Total Assets	\$ 207,175,281	\$ 220,802,859	\$ 177,953,346	\$ 115,135,605
LIABILITIES				
Current liabilities				
Accrued cost of electricity	\$ 30,827,091	\$ 36,744,837	\$ 32,132,309	\$ 34,183,673
Accounts payable	\$ 1,537,376	\$ 1,333,121	\$ 946,047	\$ 720,538
Accrued staff compensation and benefits		\$ 415,732	\$ 355,192	\$ 191,289
Other accrued liabilities	\$ 642,043	\$ 10,000	\$ 257,530	\$ -
User taxes and energy surcharges due to gover	\$ 1,055,035	\$ 1,155,781	\$ 1,238,991	\$ 1,020,385
Security deposits from energy suppliers	\$ 7,031,250		\$ 28,320	\$ 585,000
Total current liabilities	\$ 41,092,795	\$ 39,659,471	\$ 34,958,389	\$ 36,700,885
NET POSITION				
Net position				
Investment in capital assets	\$ 316,766	\$ 119,175	\$ 148,038	\$ 184,319
Restricted for line of credit collateral	\$ 4,000,216	\$ 4,500,000	\$ 5,000,000	\$ 2,000,000
Unrestricted	\$ 161,765,504	\$ 176,524,213	\$ 137,846,919	\$ 76,250,401
Total net position	\$ 166,082,486	\$ 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, California municipal obligations, commercial paper, money market funds, mortgage pass-through and asset-backed securities, supranational obligations, joint power authority pool, and FDIC insured placement service deposits.

Credit Rating. SVCE has an 'A' issuer credit rating from S&P Global with a stable outlook and a Moody's Baa2, stable rating.

APPENDIX B

DEFINITIONS OF CERTAIN TERMS

“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 fund of that name created under the Indenture.

“Applicable Factor” means (a) with respect to the initial issuance of a Series of Bonds bearing interest at a SOFR Index Rate, the percentage or factor of the SOFR Index 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 SOFR Index Rate Period (including a change in such Interest Rate Period from one SOFR Index Rate Period to another SOFR Index Rate Period), the percentage or factor of the SOFR Index determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate or Index Rate Continuation Notice, provided in each case that CCCFA 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 the Indenture and included in the applicable Index Rate Determination Certificate, and once determined shall remain constant for the duration of the applicable SOFR Index Rate Period.

“Assigned Delivery Point” means the delivery point for Assigned Energy as set forth in the applicable Assignment Agreement.

“Assigned Energy” means EPS Compliant Energy assigned pursuant to an Assignment 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 the Energy Supplier pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” means a portion of the Project Participant’s rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

“Assignment Agreements” mean the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

“Assignment Letter Agreements” means those certain Letter Agreements, dated as of the date of the Prepaid Energy Sales Agreement, by and among MSCG, the Energy Supplier, CCCFA and the Project Participant.

“Assignment Payment” means any payment received from the Energy Supplier in connection with an assignment of the Prepaid Energy Sales Agreement to a replacement energy supplier.

“Assignment Payment Fund” means the Assignment Payment Fund established under the Indenture.

“Base Energy” means Firm (LD) Energy to be delivered to an Energy Delivery Point.

“*Bond Counsel*” means Ballard Spahr 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 CCCFA.

“*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 the Indenture, including the Remarketing Proceeds Account and the Issuer Purchase Account.

“*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 CCCFA to perform the duties of Bond Registrar under the Indenture.

“*Bondholder*” or “*Holder*” or “*Owner*” means any Person who shall be the registered owner of any Bond or Bonds.

“*Business Day*” means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York 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, and (e) for purposes of determining the SIFMA Index Rate and the SOFR 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.

“*CAISO*” means California Independent System Operator or its successor.

“*Calculation Agent*” means The Bank of New York Mellon Trust Company, N.A., as Calculation Agent for the Series 2022[B]-2 Bonds and the Series 2022[B]-3 Bonds.

“*CCCFA Custodial Agreement*” means that certain Custodial Agreement, dated as of the date of issuance of the Bonds, by and among the Swap Counterparty, CCCFA, and The Bank of New York Mellon Trust Company, N.A., as Trustee and custodian, as the same may be amended, modified or supplemented from time to time.

“*CCCFA Commodity Swap*” means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date of the Indenture, by CCCFA and the Swap Counterparty, and (ii) each replacement CCCFA Swap entered into pursuant to the Prepaid Energy Sales Agreement.

“*Cede*” means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds pursuant to Section 3.09.

“*Clean Energy Project*” means, collectively, CCCFA’s purchase of Energy pursuant to the Prepaid Energy Sales Agreement and related contractual arrangements and agreements, and the purchase of any Energy to replace Energy not delivered as required pursuant to the Prepaid Energy Sales Agreement, and the sale of Energy to the Project Participant pursuant to the Power Supply Contract.

“*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 the Bonds of such Series.

“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 the Project Participant, CCCFA or the Energy Supplier under the Power Supply Contract or the Prepaid Energy Sales Agreement, as applicable, 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.

“Commodity Swap Counterparty” means [Royal Bank of Canada, a Canadian chartered bank,] and any other Person that becomes counterparty to CCCFA under the CCCFA Commodity Swap or to the Energy Supplier under a the Energy Supplier Swap, in each case pursuant to the Prepaid Energy Sales Agreement.

“Commodity Swap Payment Fund” means the Commodity Swap Payment Fund established pursuant to the Indenture.

“Commodity Swap Payments” means, as of each scheduled payment date specified in the CCCFA Commodity Swap, the amount, if any, payable to the Commodity Swap Counterparty by CCCFA (including any such amount paid to the Custodian pursuant to the CCCFA Custodial Agreement).

“Commodity Swap Receipts” means, as of each scheduled payment date specified in the CCCFA Commodity Swap, the amount, if any, payable to CCCFA by the Commodity Swap Counterparty.

“Commodity Swaps” means, collectively, the CCCFA Commodity Swap and the MSES Commodity Swap.

“Continuing Disclosure Undertaking” means the Continuing Disclosure Undertaking, dated the date of the Indenture, between CCCFA and the Dissemination Agent, as the same may be amended from time to time.

“Contract Price” means (a) the Day-Ahead Price during the Initial EPS Energy Period and thereafter 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.

“Contract Quantity” means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in the applicable exhibit to the Prepaid Energy Sales Agreement for such Month and (ii) the Hourly Quantity of Base Energy set forth in the applicable exhibit to the Prepaid Energy Sales Agreement for such Month, as such exhibits shall be updated from time to time in accordance with the Prepaid Energy Sales Agreement.

“Cost of Acquisition” means all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing the Clean Energy Project, including:

- (a) the amount of the prepayment required to be made by CCCFA under the Prepaid Energy Sales 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 the Indenture;

(e) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of the Clean Energy Project;

(f) the allowance for working capital requirements of CCCFA with respect to the Clean Energy Project in such amounts as shall be deemed reasonably necessary by CCCFA; and

(g) 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 (e) and (f) 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 the Indenture during which a CP Interest Term Rate is in effect for the Bonds of such Series.

“CP Interest Term Rate” means, with respect to any Bond of a Series of Bonds in the Commercial Paper Interest Rate Period, an interest rate established periodically for each CP Interest Term in accordance with the Indenture.

“Custodial Agreements” means, collectively, the CCCFA Custodial Agreement and the Energy Supplier Custodial Agreement.

“Custodian” means The Bank of New York Mellon Trust Company, N.A., 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 the Indenture.

“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.

“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 Prepaid Energy Sales Agreement.

“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.

“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 the 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 CCCFA 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 under the Indenture.

“Debt Service Fund” means the Debt Service Fund established in Section 5.02.

“Debt Service Fund Agreement” means any debt service fund agreement, that is a Qualified Investment, among the Trustee, CCCFA and a provider, or between CCCFA and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund. The initial Debt Service Fund Agreement shall be the investment agreement (which may be in the form of an ISDA Master Agreement) with the Investment Agreement Provider with respect to the Debt Service Account, including the Capitalized Interest Subaccount therein, with a term coterminous with the Initial Interest Rate Period, which 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.

“Debt Service Fund Agreement Guaranty” means any unconditional guaranty, in favor of CCCFA and the Trustee, guarantying the obligations of the provider under any Debt Service Fund Agreement.

“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.

“Delivery Period” means the period commencing [_____] 1, 202[___] and ending[_____] 1, 205[___].

“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 the Prepaid Energy Sales Agreement.

“Depository” means any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by CCCFA 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 CCCFA, pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent appointed by CCCFA in accordance with the Continuing Disclosure Undertaking.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Early Termination Date” means a date designated pursuant to the Prepaid Energy Sales Agreement upon which the Delivery Period will end and CCCFA’s and the Energy Supplier’s respective obligations to receive and deliver Energy under the Prepaid Energy Sales Agreement will terminate.

“Early Termination Payment Date” means the date payment of a Termination Payment is required to be made by the Energy Supplier under the Prepaid Energy Sales 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.

“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.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

“Energy Delivery Point” means the delivery point for Base Energy specified in the Prepaid Energy Sales Agreement.

“Energy Remarketing Reserve Fund” means the Energy Remarketing Reserve Fund in established under the Indenture.

“Energy Supplier” means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company.

“Energy Supplier Commodity Swap” means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date of the Prepaid Energy Sales Agreement, by the Energy Supplier and the Swap Counterparty, and (ii) each replacement the Energy Supplier Swap entered into pursuant to the Prepaid Energy Sales Agreement.

“Energy Supplier Custodial Agreement” means that certain Custodial Agreement, dated as of the date of issuance of the Bonds, by and among the Swap Counterparty, the Energy Supplier and The Bank of New York Mellon Trust Company, N.A, as Trustee and custodian, as the same may be amended, modified or supplemented from time to time.

“Energy Supplier Guaranty” means the Morgan Stanley Guarantee, as defined in the Prepaid Energy Sales Agreement.

“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 the Project Participant can contract for and purchase in compliance with EPS requirements that are applicable to the 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.

“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 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 (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 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 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 the Indenture and will not, in and of itself, cause interest on the applicable Bonds to be included in gross income for purposes of federal income taxation.

“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.

“Firm (LD)” means, with respect to the obligation to deliver Energy, that CCCFA or the Energy Supplier 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.

“Fiscal Year” means (a) the twelve-month period beginning on January 1 of each year and ending on and including the next December 31, or (b) such other twelve-month period established by CCCFA 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 CCCFA in a Written Notice delivered to the Trustee.

“Force Majeure” means an event or circumstance which prevents the Project Participant, CCCFA or the Energy Supplier from performing its obligations under the Prepaid Energy Sales Agreement or Power Supply Contract, 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 CCCFA’s or the Project Participant’s markets; (ii) CCCFA’s or the Project Participant’s inability economically to use or resell any Energy purchased under the Prepaid Energy Sales Agreement or Power Supply Contract, respectively; (iii) the loss or failure of the Energy Supplier’s supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) the Energy Supplier’s ability to sell the Energy at a higher price. No 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 the Energy Supplier or the Project Participant with respect to CCCFA) 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 the Energy Supplier; and (II) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to the Energy Supplier 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.

“*General Reserve Fund*” means the General Reserve Fund established in Section 5.02.

“*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.

“*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 the Indenture, will result in a rating on the Bonds which are deemed to have been paid pursuant to the Indenture that is in the same Rating Category of the obligations listed in subsection (a) above.

The determination as to whether any bond, note or other obligation constitutes a Government Obligation shall be made solely at the time of initial investment or purchase; *provided that*, the Trustee shall have no responsibility for determining whether any bond, note or other obligation is a Government Obligation.

“*Hour*” means each 60-minute period commencing at 00:00 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 a Delivery Period, the quantity (in MWh) of Base Energy set forth in the Prepaid Energy Sales Agreement for the Month in which such Delivery Hour occurs, as updated from time to time in accordance with the Prepaid Energy Sales Agreement.

“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 SIFMA Index or the SOFR Index, as applicable.

“Index Rate” means a SIFMA Index Rate or the SOFR Index Rate, as applicable.

“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, Thursday of each week, the first Business Day of each calendar month or the first Business Day of a calendar quarter).

“Initial Assignment Agreement” means the Assignment Agreement entered into among the Project Participant, the Energy Supplier and MSCG, as seller under the Initially Assigned PPA.

“Initial EPS Energy Period” means the period during which the Initial Assignment Agreement is in effect, which commences on first day of the initial Delivery Period and ends on [____], 20[____].

“Initial Interest Rate Period” means, with respect to the Series 2022[B] Bonds, the period from the date of issuance of the Bonds to and including [____], 202[____]*.

“Initial PPA Supplier” means MSCG.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, including the applicable U.S. Treasury Regulations promulgated thereunder.

“Interest Accrual Date” means, with respect to any Bond (a) during any Daily Interest Rate Period or Weekly Interest Rate Period for such Bond, the first day thereof and, thereafter, each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Daily Interest Rate Period or Weekly Interest Rate Period, as applicable, (b) during any Index Rate Period for such Bond, the first day thereof and, thereafter each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Index Rate Period, except as otherwise provided in the Supplemental Indenture for such Bond, (c) during any Term Rate Period for such Bond, the first day thereof and, thereafter, each Interest Payment Date in respect thereof other than the last such Interest Payment Date during that Term Rate Period, and (d) for each CP Interest Term for such Bond within a Commercial Paper Interest Rate Period, the first day thereof.

“Interest Payment Date” means (i) with respect to the Series 2022[B]-1 Bonds, each [____] 1 and [____] 1, commencing [____] 1, 202[____]*, and (ii) with respect to the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, the first Business Day of each month, commencing with the first Business Day of [____] 202[____]*.

“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 CCCFA.

“Interest Rate Swap Receipts” means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to CCCFA by the Interest Rate Swap Counterparty.

“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, each as defined in the Indenture. All Bonds of a Series shall at all times bear interest in the same Interest Rate Period, and 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 the ISDA Master Agreement, the Schedule thereto and the Confirmation thereunder between the Issuer and the Interest Rate Swap Counterparty, and any replacement interest rate swap agreement permitted by the Indenture.

“Interest Rate Swap Counterparty” means MSES.

“Investment Agreement Provider” means _____.

“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 of the Prepaid Energy Sales Agreement or at any time in the future.

“Long-Term PCCI 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, the Energy Supplier or any successors thereto pursuant to any Assigned Rights and Obligations.

“Mandatory Purchase Date” means [____], 202[____]*.

“Maturity Date” means each date upon which principal of the Bonds is due, as set forth in the Indenture.

“Maximum Lawful Rate” means the maximum interest rate permitted by applicable law.

“Maximum Rate” means the lesser of 12% per annum and the Maximum Lawful Rate.

“Minimum Discount” has the meaning specified in the Power Supply Contract.

“Month” means a calendar month. The term *“Monthly”* shall be construed accordingly.

“Monthly Quantity” means, with respect to each Month of the Delivery Period, the quantity (in MWh) of Assigned Energy for such Month as set forth in the Prepaid Energy Sales Agreement, as updated from time to time in accordance therewith.

“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 CCCFA in a Written Notice delivered to the Trustee.

“Morgan Stanley” means Morgan Stanley, a Delaware corporation.

“*Morgan Stanley Guarantee*” means a guarantee of Morgan Stanley of the Energy Supplier’s payment obligations under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, and the Interest Rate Swap.

“*MSCG*” means Morgan Stanley Capital Group Inc., a Delaware corporation.

“*MWh*” means a megawatt-hour.

“*Net Participant Shortfall Amount*” means, for any Month in which the Project Participant fails to pay the full amount due under its Power Supply Contract in time for such amount to be credited to the Revenue Fund for application pursuant to the Indenture 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.

“*NY Federal Reserve’s Website*” means the website of the Federal Reserve Bank of New York currently at <http://www.newyorkfed.org>, or any successor website of the Federal Reserve Bank of New York.

“*Operating Expenses*” means, 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 Contract; (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of this Indenture (other than Debt Service on the Bonds and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of CCCFA’s obligations under the Power Supply Contract; (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, and all other reasonable administrative and operating expenses of CCCFA, which are incurred by CCCFA with respect to the Bonds, this Indenture, or the Clean Energy Project, 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, allocable to the Clean Energy Project; provided that, for purposes of the transfers from the Revenue Fund described under the heading “*Flow of Funds*”, Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. 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 pursuant to the Indenture.

“*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 CCCFA and delivered to the Trustee.

“*Opinion of Counsel*” means an opinion signed by an attorney or firm of attorneys (who may be counsel to CCCFA) selected by CCCFA.

“*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 the Indenture;

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture;

(d) Bonds paid or deemed to have been paid as provided in the Indenture; 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.

“*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 Power Supply Contract 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 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 Power Supply Contract.

“*PCCI Product*” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, the Energy Supplier 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.

“*Pledged Funds*” means (a) the Project Fund, (b) the Revenue Fund, (c) the Debt Service Fund, (d) the General Reserve Fund, (e) the Assignment Payment Fund and (f) the Commodity Swap Payment Fund, in each case including the Accounts in each of such Funds and in the case of the Commodity Swap Payment Fund, subject to the prior pledge thereof in favor of the Commodity Swap Counterparty.

“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” means (a) the contract for the sale by CCCFA of Energy from or attributable to the Clean Energy Project to the Project Participant, as such contracts may be amended from time to time in accordance with the terms thereof and the Indenture, and (b) any other contract for the sale by CCCFA of Energy from or attributable to the Clean Energy Project entered into by a Person that becomes a Project Participant in accordance with the assignment and novation requirements set forth in the Indenture, as such contract may be amended from time to time in accordance with the terms thereof and the Indenture.

“PPA Supplier” means the Initial PPA Supplier 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.

“Prepaid Clean Energy Project Administration Agreement” means the Prepaid Clean Energy Project Administration Agreement by and between CCCFA and the Project Participant, as the same may be amended from time to time.

“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 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” means the annual fee payable by the Project Participant under its Power Supply Contract for the payment of Operating Expenses of CCCFA.

“Project Fund” means the Project Fund established under the Indenture.

“Project Participant” means (a) ECBE and (b) any other Public Agency that enters into a Power Supply Contract with CCCFA in accordance with the assignment and novation requirements set forth in the 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.

“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.

“Put Receivable” has the meaning set forth in 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 CCCFA 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), 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 CCCFA, 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 and that meet the conditions set forth in the preamble to this definition of Qualified Investments;
- (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 CCCFA and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

provided, that CCCFA shall monitor, or shall cause to be monitored, ratings and shall determine 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.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and the Energy Supplier.

“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.

“Redemption Account” means the Redemption Account in the Debt Service Fund established in the Indenture.

“Redemption Price” means, with respect to any Bond, the amount payable upon redemption thereof pursuant to such Bond or this Indenture.

“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” 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 12.11 (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 under the Indenture.

“Revenues” means:

- (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 Contract and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale and/or transmission of Energy or otherwise with respect to the 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: (u) any Termination Payment pursuant to the Prepaid Clean Energy Sales Agreement; (v) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund; (w) any amounts paid by the Project Participant under the Prepaid Clean Energy Project Administration Agreement; (x) any Assignment Payment received from the Energy Supplier; (y) Interest Rate Swap Receipts; and (z) amounts paid by the Project Participant in respect of the Project Administration Fee.

“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 CCCFA in a Written Notice delivered to the Trustee.

“*Schedule*”, “*Scheduled*” or “*Scheduling*” means the actions of the Energy Supplier, CCCFA, the Project Participant and/or their designated representatives, including their respective 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.

“*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.

“*Securities Depository*” means DTC, or its nominee, and its successors and assigns.

“*Series 2022[B] Bonds*” or “*Bonds*” means the Clean Energy Project Revenue Bonds, Series 2022[B]-1, Series 2022[B]-2 and Series 2022[B]-3.

“*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 Refinitiv 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, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. 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 CCCFA in compliance with the Indenture.

“*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 2022[B] Bonds, the amounts so designated in the Indenture.

“*SOFR Accrual Period*” means the number of actual days from (and including) (a) the Initial Issue Date or the preceding Interest Payment Date, whichever is most recent, to (but not including) (b) the next succeeding Interest Payment Date, regardless of the actual number of calendar days in any Month.

“*SOFR Effective Date*” means each Business Day.

“*SOFR Effective Period*” means the number of actual days from a SOFR Effective Date to the next SOFR Effective Date.

“*SOFR*” or *SOFR Index*” means the Secured Overnight Financing Rate reported on the NY Federal Reserve’s Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing SOFR as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date (for example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, February 17, 2022, the Calculation Agent uses SOFR published on the SOFR Publish Date of Tuesday, February 15, 2022, which is the SOFR Index for the SOFR Lookback Date of Monday, February 14, 2022). If SOFR 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 designated by CCCFA in writing (with notice to, and which is available to, the Calculation Agent) in compliance with the Indenture.

“*SOFR Index Rate*” means a daily variable interest rate equal to the sum of (1) the product of the SOFR and the Applicable Factor, plus (2) the Applicable Spread on each day of a SOFR Effective Period, not to exceed the Maximum Rate.

“*SOFR Index Rate Period*” means, with respect to a Series of Bonds, an Index Rate Period during which such Bonds bear interest at the SOFR Index Rate.

“*SOFR Interest Calculation Date*” means the last Business Day of each Month.

“*SOFR Lookback Date*” means the third Business Day immediately preceding each SOFR Effective Date.

“*SOFR Publish Date*” means the second Business Day immediately preceding each SOFR Effective Date.

“*Special Tax Counsel*” means Ballard Spahr 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 CCCFA. Bond Counsel may serve as Special Tax Counsel.

“*Specified Discount*” means the amount specified in the Prepaid Energy Sales Agreement.

“*State*” means the State of California.

“*Supplemental Indenture*” means any indenture supplemental to or amendatory of this Indenture executed and delivered by CCCFA and the Trustee in accordance with the Indenture.

“*SVCE*” means Silicon Valley Clean Energy Authority, a joint powers authority organized pursuant to Act.

“*Tax Agreement*” means the Tax Certificate and Agreement of CCCFA with respect to the Bonds dated as of the initial issue date of the Bonds.

“*Termination Payment*” means, with respect to any Early Termination Payment Date, the amount specified in the Prepaid Energy Sales Agreement 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 CCCFA.

“*Trustee*” means The Bank of New York Mellon Trust Company, N.A. 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 the Indenture.

“*Trust Estate*” means (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Power Supply Contract, 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 CCCFA 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 Energy Supplier Guaranty, (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.

“*Weekly Interest Rate*” means, with respect to a Series of Bonds, a variable interest rate established for such Bonds in accordance with the Indenture.

“*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 Series of Bonds.

“*Written Certificate*,” “*Written Direction*,” “*Written Instrument*,” “*Written Notice*,” “*Written Request*” and “*Written Statement*” of CCCFA means in each case an instrument in writing signed on behalf of CCCFA 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, Instrument, 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, Instrument, 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, Instrument Notice, Request or Statement of CCCFA, 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, instrument, 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, instrument, 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.

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a brief summary of certain provisions of the Indenture pertaining to the Bonds. Such summary does not purport to be complete and reference is made to the Indenture for full and complete statements of all provisions of the Indenture.

DEFINITIONS

See “DEFINITIONS OF CERTAIN TERMS” in APPENDIX B for the definitions of terms used but not otherwise defined in this APPENDIX C.

SUBSEQUENT INTEREST RATE PERIODS

As provided in the Indenture, 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, notwithstanding anything in the Indenture to the contrary, no Bond shall bear interest in excess of the Maximum Rate.

(Section 2.04)

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 the 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 the Indenture described in paragraph (d) below, 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 in the Indenture.

(b) *Conversion to or Continuation of Term Rate Period.* Subject to the provisions of the Indenture, 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 the provisions of the Indenture 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; and (iii) with respect to any such Term Rate Period, may specify redemption prices and periods different than those set forth in the 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 the provisions of the Indenture described in this paragraph. 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 and by a form of the notice to be mailed by the Trustee as provided in the provisions of the Indenture described in paragraph (c) below. 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 the Indenture, the interest rate or rates borne by such Series of Bonds shall be Term Rates as provided in the Indenture. 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 the Indenture.

(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 the provisions of the Indenture described in paragraph (b) above, 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 the Indenture 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; (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 the Indenture; 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 the Indenture described in paragraph (a) above, 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;

(i) The Issuer consents in writing to the sale of the Bonds of such Series at such premium or discount;

(ii) 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;

(iii) 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

(iv) On or before the Conversion Date, a Favorable Opinion of Bond Counsel shall have been delivered to the Trustee.

(Section 2.07)

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 any 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 the 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 any Applicable Factor applicable to such Bonds for the duration of the applicable Index Rate Period, and shall specify such Applicable Spread and any Applicable Factor selected by the Issuer in the Index Rate Determination Certificate for the applicable Index Rate Period. The Applicable Spread and any Applicable Factor shall 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. One Business Day prior to the Initial Issue Date of the Series 2022[B]-2 Bonds, the [SIFMA][SOFR] 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.

(ii) 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, the Business Day immediately succeeding such Wednesday, 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.

(iii) With respect to each SOFR Index Rate Period, the Calculation Agent shall (A) determine and provide to the Trustee by Electronic Means the SOFR Index by 4:00 p.m., New York City time, on each SOFR Publish Date, and (B) determine and provide to the Trustee by

Electronic Means the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date.

(iv) During any Index Rate Period, interest shall be computed on the basis of a 365/366-day year and actual days elapsed. The Calculation Agent shall calculate and provide by Electronic Means to the Issuer and the Trustee the amount of interest due and payable on each Series of Bonds bearing interest at an Index Rate at least one Business Day prior to each Interest Payment Date. The amount of interest due on a Series of Bonds bearing interest at the SIFMA Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the calendar month immediately preceding such Interest Payment Date based on a per annum rate equal to the daily weighted average of the SIFMA Index. The amount of interest due on a Series of Bonds bearing interest at the SOFR Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the SOFR Accrual Period immediately preceding such Interest Payment Date. 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 to the nearest six decimal places (with 0.0000005 being rounded up to 0.000001).

(v) In determining the interest rate that any Bond shall bear as described in this section entitled “Index Rate Periods,” 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.

(vi) 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 the provisions of the Indenture relating to notices of conversion, 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 the Indenture 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 and a form of the notice to be mailed by the Trustee pursuant to the provisions of the Indenture described in paragraph (d) below.

(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 the provisions of the Indenture described in paragraph (b) above, 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 the Indenture 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 the Indenture; and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(Section 2.09)

PROVISIONS REGARDING INTEREST RATE SWAP

(a) In connection with the issuance of any Variable Rate 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 or a Commercial Paper Interest Rate Period, the Issuer shall enter into an Interest Rate Swap with an 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 the 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 the 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) The Issuer agrees that it will not exercise any right to declare an early termination date under the Interest Rate Swap unless either (A) the 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) The 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 same hedging purposes with an alternate Interest Rate Swap Counterparty at any time upon delivery to the Trustee of a Rating Confirmation.

(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) the Issuer may, subject to clause (i) above, terminate the Interest Rate Swap if the Issuer has the right to do so, and (B) the

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 the Issuer shall determine to be necessary.

(Section 2.13)

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 the Indenture 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 as described in this paragraph or in the notice provided pursuant to the Indenture.

(Section 4.14)

GENERAL PROVISIONS RELATING TO TENDERS

(a) *Creation of Bond Purchase Fund.*

(i) There shall be created and established under the Indenture 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 under the Indenture 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 the Indenture described under the first paragraph of "*Deposits of Funds*" below and (B) the Issuer shall be deposited in the Issuer Purchase Account in accordance with the provisions of the Indenture described under the second paragraph of "*Deposits of Funds*" below. Moneys provided by the Issuer not required to be used in connection with the purchase of tendered Bonds shall be returned to the Issuer in accordance with the provisions of the Indenture described under "*Deposits of Funds*" and "*Disbursements; Payment of Purchase Price*" below.

(iii) Moneys in the 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. The 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 the Indenture 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 the Indenture and until such Bonds shall have been delivered by the Trustee in accordance with the provisions of the Indenture described under “*Delivery of Purchased Bonds*” below.

(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 the Indenture, 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 the Indenture.

(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 “*Delivery of Purchased Bonds*” below.

(iii) Any Purchased Bonds which are subject to mandatory tender for purchase in accordance with the Indenture which are not presented to the Trustee on the Purchase Date and any Purchased Bonds which are the subject of a notice pursuant to the Indenture which are not presented to the Trustee on the Purchase Date, shall, in accordance with the provisions of the Indenture, 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 the provisions of the Indenture described under “*Delivery of Purchased Bonds*” below and on account of Purchased Bonds remarketed pursuant to the terms of the Remarketing Agreement.

(ii) The 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 as described in the preceding paragraph (the “*Additional Liquidity Drawing Amount*”) by 12:45 p.m., New York City time. The Trustee shall

deposit any Additional Liquidity Drawing Amounts into the Issuer Purchase Account for the applicable Series of Bonds.

(iii) The Trustee shall hold all proceeds received from the Remarketing Agent or the Issuer pursuant to the provisions of the Indenture described under this section entitled “*Deposits of Funds*” 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 the Issuer and will not be subject to the control of the Issuer. Subject to the provisions of the Indenture described under “*Disbursements; Payment of Purchase Price*” below, following the discharge of the pledge created by the Indenture 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 the Issuer Purchase Account for the Bonds of the applicable Series.

Any moneys held by the Trustee in the 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 the Issuer, upon a request in a Written Direction of the 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 the Issuer to the extent moneys have been transferred in accordance with the provisions of the Indenture described in this paragraph. 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 the Indenture, 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 the Issuer Purchase Account shall be delivered on the day of such

purchase by the Trustee to or as directed by the Issuer. The Trustee shall register such Bonds in the name of the Issuer or as otherwise directed by the Issuer.

(Section 4.15)

NOTICE OF MANDATORY TENDER FOR PURCHASE

In connection with any mandatory tender for purchase of Bonds in accordance with the Indenture, the Trustee shall give the notice (which in the case of a mandatory tender pursuant to the provisions of the Indenture described under the section entitled “Mandatory Tender for Purchase on Conversion of Interest Rate Period” above shall be given as a part of the notice given pursuant to certain provisions of the Indenture) 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 the Indenture other than to receive payment of the Purchase Price thereof. Any such notice of a mandatory tender of Bonds pursuant to the Indenture shall be given no less than thirty (30) days prior to the applicable Mandatory Purchase Date, and the Trustee shall give a conditional notice of extraordinary redemption pursuant to the Indenture no later than the applicable deadlines set forth therein 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 the Indenture, the Issuer shall direct the Trustee to send such conditional redemption notice pursuant to a Written Direction in the form attached to the Indenture, 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 the Indenture.

(Section 4.16)

THE PLEDGE EFFECTED BY THE INDENTURE

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 the Indenture solely by, the Trust Estate. Pursuant to the Granting Clauses of the 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 the 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 (ii) the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the 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.

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 the 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.

Nothing contained in the Indenture shall be construed to prevent the 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 the Clean 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 5.01)

ESTABLISHMENT OF FUNDS AND ACCOUNTS

(a) The following Funds and Accounts are established in the Indenture, each of which shall be held by the Trustee except as indicated below:

- (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;
- (vii) Energy Remarketing Reserve Fund, consisting of a Remediation Account;
- (viii) Assignment Payment Fund;
- (ix) Bond Purchase Fund, consisting of the Issuer Purchase Account and the Remarketing Proceeds Account; and
- (x) Administrative Fee Fund.

(b) Within the Funds and Accounts established under the Indenture 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 the Indenture. The Issuer may, by Supplemental Indenture, with the prior written approval of the Trustee, establish one or more additional accounts or subaccounts. By Supplemental Indenture, the 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 Power 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 5.02)

PROJECT FUND

(a) There shall be paid into the Project Fund proceeds of the Bonds in the amount specified by Written Request of the Issuer, and there may be paid into the Project Fund, at the option of the Issuer, any moneys received for or in connection with the Clean Energy Project by the Issuer from any other source, unless required to be otherwise applied as provided by the 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 the Issuer, representing capitalized interest on the Bonds to the date set forth in such Written Request. Except as otherwise described in this section entitled “Project Fund,” amounts in the Project Fund shall be applied by the Issuer to pay the Cost of Acquisition and any capitalized interest on the Bonds.

(b) Before any payment is made by the Trustee from the Project Fund, the Issuer shall file with the Trustee a Written Request of the 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 the 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 from the applicable Account in accordance with and subject to the applicable terms of the Indenture described in this section entitled “Project Fund.”

(d) Notwithstanding any of the other provisions described in this section entitled “Project Fund,” 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 the 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 5.03)

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, as identified in a written notice from the Issuer to the Trustee, 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 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 Power Supply Contract, the Trustee shall perform the following actions on behalf of the Issuer under the Receivables Purchase Provisions: (i) provide a preliminary notice by email to the 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. 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 the Receivables Purchase Provisions. The Trustee is authorized under the Indenture to sell the Put Receivables then owed by the Specified Project Participants under their respective Power 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 the Indenture.

(c) Upon receipt of the preliminary notice from the Trustee pursuant to (b)(i) above, the 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 the Indenture,

(ii) any Assignment Payment shall be deposited directly into the Assignment Payment Fund as provided in the Indenture,

(iii) [Reserved.];

(iv) amounts representing the Project Administration Fee, together with any amounts paid by the Project Participants under a Prepaid Clean Energy Project Administration Agreement, 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 the Indenture; and

(vi) any amounts required by the Indenture to be deposited into the Energy Remarketing Reserve Fund shall be deposited directly therein.

(Section 5.04)

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) [Reserved.];

(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 necessary for the payment of Operating Expenses coming due for such 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 attached to the Indenture, or (B) the amount necessary to cause an amount equal to the cumulative unpaid Scheduled Debt Service Deposits due through such date 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 Put Receivables and the payment of interest on all Put 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 attached to the Indenture, the Trustee shall immediately notify the Issuer of such deficiency and the Trustee shall (i) if the Issuer has not previously done so, cause the Issuer to suspend all deliveries of all quantities of Energy under a Power 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 5.05)

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 the Indenture.

(Section 5.06)

DEBT SERVICE FUND – DEBT SERVICE ACCOUNT

(a) The amounts deposited into the Debt Service Account pursuant to the Indenture 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 the Issuer to the Trustee that the 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 the Issuer in a Written Request delivered not less than thirty (30) days before the due date of such Sinking Fund Installment, be applied by the Trustee to (i) the purchase of Bonds of the Series, maturity and tenor 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 and redemptions of any Bonds pursuant to this paragraph (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 the 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 (30th) 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 the Indenture, Bonds of the Series, maturity and tenor 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 the provisions of the Indenture described under the section entitled “General Reserve Fund” below which the Issuer has directed the Trustee in writing to apply as a credit against such Sinking Fund Installment as provided in the Indenture. The Trustee shall pay out of the Debt Service Account to the Paying Agent, on or before such redemption date or maturity date, as applicable, 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, as applicable. All expenses in connection with the purchase or redemption of Bonds shall be paid by the Issuer in such manner as the 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 the Indenture 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 provisions of the Indenture described under this section entitled “Debt Service Fund – Debt Service Account,” 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 the 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 and redemptions of any Bonds as described in this paragraph shall be made at prices not exceeding the principal amount of such Bonds plus accrued interest, and such purchases and redemptions shall be made in such manner as the 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 from the proceeds thereof shall be set aside and applied to the payment of interest on such Series of Bonds and related Interest Rate Swap Payments.

(f) In the event of the refunding or defeasance of any Bonds, the Trustee shall, if directed by the 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 the Indenture. In the event of such refunding or defeasance, the 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 under the Indenture; *provided, however*, that such withdrawal shall not be made unless the Bonds being defeased shall be deemed to have been paid pursuant to the Indenture and provided, further, that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held under the Indenture.

(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 5.07)

DEBT SERVICE FUND – REDEMPTION ACCOUNT

(a) In the event of an early termination of the Energy Purchase Agreement, the Issuer shall direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of the 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 the Indenture.

(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 owned by the Energy Supplier, and third, upon Written Direction of the 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 5.08)

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) 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 the Indenture.

(Section 5.09)

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 described in paragraph (a)(iii) of “Payments from Revenue Fund” above; 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 the Indenture.

(b) Amounts on deposit in the General Reserve Fund not required to meet a deficiency or to make a deposit as provided in paragraph (a) above shall be applied by the Trustee upon the Written Request of the 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 Power 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 the Issuer determines shall be required for such purposes; and
- (v) any other lawful purpose of the Issuer under the Act;

provided, however, that, subject to the provisions of paragraph (a) of this section entitled “General Reserve Fund,” amounts credited to the General Reserve Fund and required by the Indenture to be applied to the purchase or redemption of Bonds shall be applied to such purpose.

(c) If at any time Bonds of any Series, maturity and tenor for which Sinking Fund Installments shall have been established are (i) purchased or redeemed other than as described in “Debt Service Fund – Debt Service Account” above or (ii) deemed to have been paid pursuant to the Indenture and, with respect to such Bonds which have been deemed paid, irrevocable written instructions have been given by the 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 paragraph (c), the 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 thirty (30) 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 5.10)

ENERGY REMARKETING RESERVE FUND

There shall be paid by the Trustee into the Remediation Account of the Energy Remarketing Reserve Fund, and within such Remediation Account the subaccount applicable to each Project Participant, the amounts, as directed in a Written Direction of the Issuer, specified in the Remarketing Provisions. In the case of a Remediation Remarketing (as defined in the Remarketing Provisions) pursuant to the Remarketing Provisions, amounts shall be released from the applicable subaccount of the Remediation Account upon such remarketing and applied pursuant to a Written Direction of the 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 applicable subaccount 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 applicable subaccount 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 the Issuer from the remarketing, and (y) any remaining amounts allocable to such remarketing shall be transferred to the General Reserve Fund. For purposes of the provisions of the Indenture described in this paragraph, the portion of the applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund specified in writing by the 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 the 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 the Remarketing Provisions, multiplied by (ii) the balance of the applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund at the time of the remarketing.

(Section 5.11)

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 the Issuer in writing to the Redemption

Account pursuant to the Indenture, along with the proceeds of the Refunding Bonds, in order to redeem all of the Outstanding Bonds.

(Section 5.12)

PURCHASES OF BONDS

Except as otherwise provided in the Indenture, any purchase of Bonds (or portions thereof) by or at the direction of the Issuer pursuant to the Indenture may be made with or without tenders of Bonds and at either public or private sale, in such manner as the Issuer may determine.

(Section 5.13)

ADMINISTRATIVE FEE FUND

All Project Administration Fees, together with any amounts paid by the Project Participants pursuant to a Prepaid Clean Energy Project Administration Agreement, shall be deposited by the Trustee into the Administrative Fee Fund. The Trustee shall apply amounts on deposit in the Administrative Fee Fund to pay Operating Expenses promptly upon receipt of a Written Request of the Issuer directing such payment. In the event amounts on deposit in the Administrative Fee Fund are insufficient to make any payments directed in the Written Request of the Issuer, the Trustee shall promptly notify each Project Participant, at its respective address shown on Schedule I attached to the Indenture, of the fact and amount of such deficiency.

(Section 5.14)

INVESTMENT OF CERTAIN FUNDS

Moneys held in the Debt Service Account shall be invested and reinvested by the Trustee at the Written Direction of the 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, the 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 the 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 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 the 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 the 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 the 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 the Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of the Issuer and may rely on

such investment directions without verifying the suitability or legality of such investment and any deposit or investment directed by the Issuer shall constitute a certification by the 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 the Indenture, the 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 the Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of the Issuer. The Trustee shall be entitled to rely in good faith on any Written Direction of the Issuer as to the suitability and legality of the directed investment and any deposit or investment directed by the Issuer shall constitute a certification by the 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 the Indenture, the 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 under the Indenture 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 Energy Remarketing Reserve Fund, and (iv) the Administrative Fee 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 the Indenture shall prevent any Qualified Investments acquired as investments of or security for Funds held under the 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 the Indenture shall preclude the Trustee from investing or reinvesting moneys that it holds in the Funds and Accounts established pursuant to the Indenture through its bond department; provided, however, that the 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 the Indenture.

(Section 6.03)

VALUATION AND SALE OF INVESTMENTS

Obligations purchased as an investment of moneys in any Fund created under the provisions of the 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 the Indenture for any purpose provided in the 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 the Issuer to the Trustee as of each Principal Installment payment date and at such other times as the 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 the Indenture.

Except as otherwise provided in the 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 the 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 the Issuer, the Issuer or the Trustee at the Written Direction of the 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 the Issuer to the Trustee as necessary to provide sufficient moneys for such payment or transfer. The Issuer acknowledges that, to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grants the Issuer the right to receive from the Trustee brokerage confirmations of security transactions as they occur, the Issuer specifically waives receipt of such confirmations to the extent permitted by law. 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 in the Indenture.

(Section 6.04)

POWER TO ISSUE BONDS AND PLEDGE THE TRUST ESTATE

The Issuer is duly authorized under all applicable laws to create and issue the Bonds and to execute and deliver the Indenture and to pledge the Trust Estate, in the manner and to the extent provided in the Indenture. Except to the extent otherwise provided in or contemplated by the 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 the Indenture, and all action on the part of the Issuer to that end has been and will be duly and validly taken. The Bonds and the provisions of the Indenture are and will be the valid and legally enforceable limited obligations of the Issuer in accordance with their terms and the terms of the Indenture. The 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 the Indenture and all the rights of the Bondholders under the Indenture against all claims and demands of all Persons whomsoever.

(Section 7.05)

POWER TO FIX AND COLLECT FEES AND CHARGES FOR THE SALE OF ENERGY

The 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 of Energy or otherwise with respect to the Clean Energy Project, subject to the terms of the Power Supply Contracts.

(Section 7.06)

CREATION OF LIENS

Except as expressly permitted under the terms of the 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 bonds, notes, debentures or other evidences of indebtedness issued to refund Outstanding Bonds, or otherwise incur obligations other than those contemplated by the 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 the 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 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 the 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 the Indenture shall be discharged and satisfied as provided in the Indenture, or (B) Commodity Swap and Interest Rate Swaps upon the terms and conditions set forth in the Indenture.

(Section 7.07)

AMENDMENTS TO POWER SUPPLY CONTRACTS

The 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 Power Supply Contract that will impair the ability of the 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 the 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 other than any such amounts which the Issuer anticipates shall be transferred from other Funds or Accounts;

(c) The amounts, if any, to be paid during such Fiscal Year into any other Fund established under the Indenture; and

(d) All other charges or liens whatsoever payable out of Revenues during such Fiscal Year;

provided that:

(i) the Issuer may take any other action under or in connection with the Power Supply Contracts that is expressly permitted pursuant to the provisions thereof;

(ii) the Issuer and a Project Participant may amend a Power Supply Contract to change any Delivery Point (as defined and provided therein);

(iii) a Power 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 the 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) the Issuer may agree to an assignment or novation of all or a portion of a Project Participant's rights and obligations under a Power Supply Contract upon (A) compliance with the restrictions on assignment set forth in such Power Supply Contract, and (B) receipt of a Rating Confirmation with respect to such assignment or novation; and

(v) a Power Supply Contract may also be amended in connection with a remediation pursuant to the Energy Purchase Agreement.

(Section 7.10)

POWER SUPPLY CONTRACTS; ENERGY REMARKETING

(a) The Issuer shall cause all Revenues payable by the Project Participants under the Power Supply Contracts to be payable directly to the Trustee for deposit into the Revenue Fund or custodial accounts established pursuant to the provisions of the Indenture. The Issuer shall 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 duly perform its covenants and agreements thereunder.

(b) In the event that any Project Participant fails to pay when due any amounts owed to the Issuer under a Power Supply Contract, the 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 Power Supply Contract) in respect of any Reset Period, then the 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 the Indenture, the Power Supply Contracts with the Project Participants set forth on Schedule I attached to the Indenture shall be the only Power 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 a Power Supply Contract in compliance with the provisions of the Indenture described under this section entitled "Power Supply Contracts; Energy Remarketing," the Issuer may sell the quantities of Energy to be delivered under the Energy Purchase

Agreement only pursuant to the Power Supply Contracts. A copy of each Power Supply Contract and any amendment to a Power Supply Contract, certified by an Authorized Officer, shall be filed with the Trustee.

(Section 7.11)

ENERGY PURCHASE AGREEMENT; ENERGY SUPPLIER GUARANTY

(a) The Issuer shall enforce the provisions of the Energy Purchase Agreement and duly perform its covenants and agreements thereunder and shall enforce the provisions of the Energy Supplier Guaranty.

(b) The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Energy Purchase Agreement. The 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) The 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 the Issuer thereunder or the rights or security of the Bondholders under the 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 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 7.12)

COMMODITY SWAP

The Issuer shall cause all Commodity Swap Receipts and any other amounts payable to the Issuer pursuant to the Commodity Swap to be collected and paid directly to the Trustee for deposit into the Revenue Fund. The Issuer shall enforce the provisions of the Commodity Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Commodity Swap Counterparty under the Commodity Swap. The 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 the Issuer to comply during the current or any future year with the provisions of the Indenture. The Issuer shall only exercise its right to terminate the Commodity Swap in compliance with the Indenture. 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 7.14)

INTEREST RATE SWAP

The Issuer shall cause all Interest Rate Swap Receipts or other amounts payable to the Issuer pursuant to the Interest Rate Swap to be collected and paid to the Trustee for deposit into the Debt Service Account. The Issuer shall enforce the provisions of the Interest Rate Swap and duly perform its covenants

and agreements thereunder. The Trustee shall promptly notify the 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. The 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 the Issuer to comply during the current or any future year with the provisions of the Indenture. The Issuer shall only exercise its right to terminate the Interest Rate Swap in compliance with the Indenture. 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 7.15)

TAX COVENANTS

(a) The Issuer covenants in the Indenture 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, the 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. The Issuer further agrees to follow any directions provided by Special Tax Counsel with respect to any such redemption. Such covenant shall survive payment in full or defeasance of the Bonds.

(b) In the event that at any time the Issuer is of the opinion that for purposes of the provisions of the Indenture described in this section entitled “Tax Covenants” it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under the Indenture, the 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 the Indenture described in this section entitled “Tax Covenants,” if the Issuer shall provide to the Trustee an Opinion of Special Tax Counsel that any specified action required under the provisions of the Indenture described in this section entitled “Tax Covenants” 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, the Issuer and the Trustee may conclusively rely on such opinion in complying with the requirements of the provisions of the Indenture described in this section entitled “Tax Covenants” and of the Tax Agreement, and the covenants under the Indenture shall be deemed to be modified to that extent.

(d) Notwithstanding any other provision of the Indenture to the contrary, upon the 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 the Indenture based upon the Issuer’s failure to observe, or refusal to comply with, the above covenants. In connection with any action taken by it under the provisions of the Indenture described in this section entitled “Tax Covenants,” the Trustee shall have the benefit of all of the protective provisions set forth in the Indenture.

(Section 7.18)

EVENTS OF DEFAULT

Any one or more of the following shall constitute an “Event of Default” under the Indenture:

(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 the Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in the 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” under the Indenture is given to the Issuer by the Trustee or to the 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) the 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 under the Indenture unless in addition, (i) the Issuer is unable to meet its debts with respect to the Clean 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 the Clean 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 the Clean 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 the Clean 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 the 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 under the Indenture unless in addition, (i) the Issuer is unable to meet its debts with respect to the Clean 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 the Clean Energy Project), or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Clean 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 the Issuer and its affairs or a decree or order finding or determining that the Issuer is unable to meet its debts with respect to the Clean 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 8.01)

ENFORCEMENT OF AGREEMENTS; APPLICATION OF MONEYS AFTER DEFAULT

(a) The Issuer covenants that, if an Event of Default shall have occurred and be continuing, 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 Power 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 the Issuer under the Power 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, to secure its obligations under the Indenture, the Issuer irrevocably pledges and collaterally assigns to the Trustee the Issuer's rights to issue notices (including notices to direct the remarketing of Energy) and to take any other actions that the Issuer is required or permitted to take under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap, and, while an Event of Default has occurred and is continuing under the Indenture, the Trustee is authorized and directed, and shall have the authority, to take any such actions as it deems necessary under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap. Notwithstanding this authorization, the Issuer shall retain, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights which it has pledged and collaterally assigned to the Trustee in accordance with the foregoing; provided, however, if an Event of Default has occurred and is continuing, the Trustee shall have the right to notify the 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 Power Supply Contracts, and the Commodity Swap Counterparty under the Commodity Swap, subject to the rights of the Energy Supplier with respect to the Power 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 Event of Default has been cured pursuant to the terms of the Indenture or the Trustee issues a subsequent notice otherwise. For the avoidance of doubt, the Energy Purchase Agreement, the Power 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 provision of opinions or other process under the Indenture.

(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 Article VIII of the Indenture in accordance with Article V of the 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 under the Indenture, 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, (3) moneys held in the General Reserve Fund shall not be used other than for the payment of the items specified under the Indenture, and (4) moneys held in the Administrative Fee Fund shall not be used other than as specified in the Indenture.

(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 the Issuer under the 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 the Issuer, or provisions satisfactory to the Trustee shall be made for such payment, and all defaults under the 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 the 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 the Indenture, particularly the terms of the Indenture described under “Establishment of Funds and Accounts” above, to be deposited or pledged, with the Trustee), and thereupon the Issuer and the Trustee shall be restored, respectively, to their former positions and rights under the Indenture. No such payment over to the Issuer by the Trustee nor restoration of the Issuer and the Trustee to their former positions and rights shall extend to or affect any subsequent default under the Indenture or impair any right consequent thereon.

(Section 8.03)

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 the Clean Energy Project.

(Section 8.04)

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 the Indenture forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant contained in the Indenture, or in aid of the execution of any power granted pursuant to the Indenture, or for an accounting against the Issuer as if the 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 the Indenture.

(b) All rights of action under the 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 the Indenture, the Trustee shall be entitled to exercise any and all

rights and powers conferred in the 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 the Indenture by any acts which may be unlawful or in violation of the 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 8.05)

RESTRICTION ON BONDHOLDERS' 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 the Indenture or the execution of any trust under the Indenture or for any remedy under the 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 the Indenture, 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 the 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 the Indenture, or to enforce any right under the Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of all Holders of the Outstanding Bonds, subject only to the provisions of the Indenture.

(b) Nothing in the Indenture or in the Bonds shall affect or impair the obligation of the Issuer, which is absolute and unconditional, to pay only from the Trust Estate, in accordance with the terms of the 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 8.06)

REMEDIES NOT EXCLUSIVE

No remedy by the terms of the 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 the Indenture or existing at law or in equity or by statute on or after the date of execution and delivery of the Indenture.

(Section 8.07)

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 the Indenture 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 the Indenture, 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 the 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 8.08)

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 the Issuer.

(Section 8.09)

SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF BONDHOLDERS

The Issuer and the Trustee may from time to time, subject to the conditions and restrictions contained in the Indenture, enter into a Supplemental Indenture or Indentures, in form satisfactory to the Trustee, which shall thereafter form a part of the Indenture, without the consent of the Bondholders for any one or more of the following purposes:

(i) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Indenture;

(ii) To insert such provisions clarifying matters or questions arising under the Indenture as are necessary or desirable and are not contrary to or inconsistent with the Indenture as theretofore in effect;

(iii) To make any other modification or amendment of the 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;

(iv) To add to the covenants and agreements of the Issuer in the Indenture, other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(v) To add to the limitations and restrictions in the Indenture, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(vi) To authorize the issuance of Refunding Bonds;

(vii) 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 under the Indenture to the Holders of such coupon Bonds, which are not contrary to or inconsistent with the 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;

(viii) To provide for the execution of a Commodity Swap in accordance with the provisions of the Indenture;

(ix) To provide for a Liquidity Facility and Liquidity Facility Provider in accordance with the provisions of the Indenture;

(x) 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, the Indenture of the Revenues or of any other moneys, securities or funds;

(xi) To add to the Events of Default in the Indenture additional Events of Default;

(xii) To add to the Indenture any provisions relating to the application of interest earnings on any Fund or Account under the Indenture required by law to preserve the exclusion of interest on Bonds issued from gross income for federal income tax purposes;

(xiii) To evidence the appointment of a successor Trustee; or

(xiv) 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 entitled “Supplemental Indentures not Requiring Consent of Bondholders” shall become effective as of the date of its execution and delivery by the 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 10.01)

GENERAL PROVISIONS

(a) The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of the Indenture relating to supplemental indentures and amendments. Nothing contained in the provisions of the Indenture relating to supplemental indentures and amendments shall affect or limit the right or obligation of the Issuer to adopt, make, do, execute,

acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of the Indenture or the right or obligation of the Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in the Indenture it is provided shall be delivered to said Fiduciary.

(b) Any Supplemental Indenture referred to and permitted or authorized by the Indenture may be entered into between the 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 under the Indenture. A copy of every Supplemental Indenture shall be accompanied by an Opinion of Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture, and is valid and binding upon the Issuer; provided, that such Opinion of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, 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 authorized under the Indenture to enter into any Supplemental Indenture referred to and permitted or authorized by the Indenture 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 the 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 the provisions of the Indenture described under this section entitled "General Provisions" shall not affect the rights of the Holders or the Issuer to remove the Trustee as provided in the Indenture.

(e) Notwithstanding anything in the provisions of the Indenture relating to supplemental indentures to the contrary, no Supplemental Indenture (or other amendment to the Indenture) shall change or modify (i) the order of priority of deposits set forth in the Indenture, (ii) the priority of the application of funds following an Event of Default as set forth in the Indenture, (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 in the Indenture or in the Commodity Swap, the Interest Rate Swap or the Receivables Purchase Provisions, as the case may be, or (v) the provisions of the Indenture regarding the sale by the Trustee of Put 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 paragraph (e), unless the prior written consent of the Interest Rate Swap Counterparty and/or the Energy Supplier, as applicable, has been obtained.

(Section 10.03)

POWERS OF AMENDMENT

Any modification or amendment of the Indenture and of the rights and obligations of the Issuer and of the Holders of the Bonds thereunder may be made by a Supplemental Indenture, subject to the provisions of the Indenture, with the written consent given as provided in the Indenture 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 have become 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 entitled “Powers of Amendment;” 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 the provisions of the Indenture described in this paragraph, the Bonds shall be deemed to be affected by a modification or amendment of the 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 the Indenture and any such determination shall be binding and conclusive on the Issuer and all Holders of Bonds. For purposes of this section entitled “Powers of Amendment,” the Holders of any Bonds may include the initial Holders thereof, regardless of whether such Bonds are being held for resale.

(Section 11.02)

DEFEASANCE

(a) If the 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 the Indenture and shall pay or cause to be paid all amounts due or to become due to the Interest Rate Swap Counterparty under the Interest Rate Swap, then the pledge of all covenants, agreements and other obligations of the 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 the Indenture shall not be discharged until (i) the Issuer shall have paid and satisfied all claims, charges and expenses that constitute Operating Expenses under the Indenture, (ii) the Trustee shall have received an Opinion of Counsel to the effect that all conditions precedent to the satisfaction and discharge of the 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 the Issuer to be prepared and filed with the Issuer and, upon the request of the Issuer, shall execute and deliver to the Issuer all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to the Issuer all moneys or securities held by them pursuant to the 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 the 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 the Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under the Indenture, and all covenants, agreements and obligations of the 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 the 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 the above paragraph (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 the above paragraph (a) upon compliance with the provisions of the below paragraph (c).

(c) Subject to the provisions of the Indenture described in paragraph (d) below, 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 paragraph (a) above of under this section entitled “Defeasance” if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the 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 the Issuer or purchased or otherwise acquired by the Issuer and delivered to the Trustee as thereafter 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 the Indenture) 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, the 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 the provisions of the Indenture described under this section entitled “Defeasance” and stating such maturity or redemption date upon which moneys are expected, subject to the provisions of paragraph (d) below of this section entitled “Defeasance,” 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 the Issuer or purchased or otherwise acquired by the Issuer and delivered to the Trustee as provided in the Indenture 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 the provisions of the Indenture described under this section entitled “Defeasance” to the retirement of said Bonds in amounts equal to the unsatisfied balances (determined as provided in the Indenture) of any Sinking Fund Installments with respect to such Bonds, all in the manner provided in the Indenture. The Trustee shall, if so directed by the Issuer (A) prior to the maturity date of Bonds deemed to have been paid in accordance with the provisions of the Indenture described under this section entitled “Defeasance” 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 the provisions of the Indenture described under this section entitled “Defeasance” 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 the provisions of the Indenture described under this section entitled “Defeasance” 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 the provisions of the Indenture described under this section entitled “Defeasance” which are to be redeemed on any date prior to their maturity, the 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 the 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 the provisions of the Indenture described under this section entitled “Defeasance.” The directions given by the 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 the provisions of the Indenture described under this section entitled “Defeasance” 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 the provisions of the Indenture described under this section entitled “Defeasance” 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 the provisions of the Indenture described under this section entitled “Defeasance” the total amount of moneys and Defeasance Securities remaining on deposit with the Trustee under the provisions of the Indenture described under this section entitled “Defeasance” 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 paragraph (c) of this section entitled “Defeasance,” the Trustee shall, if requested by the Issuer, pay the amount of such excess to the Issuer free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under the Indenture. Except as otherwise provided in paragraphs (c) and (d) of this section entitled “Defeasance,” neither Defeasance Securities nor moneys deposited with the Trustee pursuant to the provisions of the Indenture described under this section entitled “Defeasance” 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 the Issuer as received by the Trustee, free and clear of any trust, lien or pledge securing said Bonds or otherwise existing under the 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 the 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 the Indenture. Notwithstanding anything contained in the Indenture to the contrary, the 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 the 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 (or, if shorter, one Business Day before such moneys would escheat to the State under then applicable State law) 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 the Issuer, be repaid by the Fiduciary to the 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 the Issuer for the payment of such Bonds; provided, however, that before being required to make any such payment to the Issuer the Fiduciary shall, at the expense of the 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 the Issuer.

(Section 12.01)

[Remainder of Page Intentionally Left Blank]

APPENDIX D
FORM OF CONTINUING DISCLOSURE UNDERTAKING
FOR THE PURPOSE OF PROVIDING
CONTINUING DISCLOSURE INFORMATION
UNDER SECTION (b)(5) OF RULE 15c2-12

[closing date]

This Continuing Disclosure Undertaking (the “*Agreement*”) is executed and delivered by California Community Choice Financing Authority (“*CCCFA*”) in connection with the issuance of its \$_____ Clean Energy Project Revenue Bonds Series 2022[B]-1 (Green Bonds) (Term Rate), \$_____ Clean Energy Project Revenue Bonds Series 2022[B]-2 (Green Bonds) (SIFMA Index Rate), and \$_____ Clean Energy Project Revenue Bonds Series 2022[B]-3 (Green Bonds) (SOFR Index Rate) (collectively, the “*Bonds*”). The Bonds are being issued pursuant to a Trust Indenture, dated as of _____ 1, 2022 (the “*Indenture*”), between CCCFA and The Bank of New York Mellon Trust Company, N.A., as trustee.

In consideration of the issuance of the Bonds by CCCFA and the purchase of such Bonds by the beneficial owners thereof, CCCFA covenants and agrees as follows:

1. Purpose of This Agreement. This Agreement is executed and delivered by CCCFA as of the date set forth below, for the benefit of the beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule (as defined below). CCCFA represents that it will be the only “obligated person” within the meaning of the Rule with respect to the Bonds at the time the Bonds are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after the issuance of the Bonds.

2. Definitions. (a) The terms set forth below shall have the following meanings in this Agreement, unless the context clearly otherwise requires.

“*Annual Financial Information*” means the financial information and operating data described in *Exhibit I*.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

“*Audited Financial Statements*” means the audited financial statements of CCCFA prepared pursuant to the standards and as described in *Exhibit I*.

“*Commission*” means the Securities and Exchange Commission.

“*Dissemination Agent*” means any agent designated as such in writing by CCCFA and which has filed with CCCFA a written acceptance of such designation, and such agent’s successors and assigns.

“*EMMA*” means the MSRB through its Electronic Municipal Market Access system for municipal securities disclosure or through any other electronic format or system prescribed by the MSRB for purposes of the Rule.

“*Energy Supplier*” means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company and its successors and permitted assigns.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Final Official Statement*” means the Final Official Statement dated _____, 2022, relating to the Bonds.

“*Financial Obligation*” means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of an obligation or instrument described in clause (a) or (b) of this definition; provided however, the term Financial Obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“*Monthly Ledger Report*” means the copies of the ledgers maintained by the Energy Supplier pursuant to Exhibit C of the Prepaid Energy Sales Agreement and delivered each month to CCCFA pursuant to Section 9(b)(i) of such Exhibit.

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*Non-Private Business Sales Ledger*” and “*Private Business Sales Ledger*” have the meanings assigned to such terms in Exhibit C to the Prepaid Energy Sales Agreement.

“*Participating Underwriter*” means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Bonds.

“*Prepaid Energy Sales Agreement*” means the Prepaid Energy Sales Agreement dated as of _____, 2022 between the Energy Supplier and CCCFA.

“*Remarketing Non-Default Termination Event*” has the meaning assigned to such term in Exhibit C to the Prepaid Energy Sales Agreement.

“*Reportable Event*” means the occurrence of any of the Events with respect to the Bonds set forth in *Exhibit II*.

“*Reportable Events Disclosure*” means dissemination of a notice of a Reportable Event as set forth in Section 5.

“*Rule*” means Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

“*Undertaking*” means the obligations of CCCFA pursuant to Sections 4 and 5.

(b) Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

3. CUSIP Numbers. The CUSIP Numbers of the Bonds are as follows:

MATURITY	AMOUNT	CUSIP
(_____ 1)		NUMBER

CCCFA will include the CUSIP Numbers (or applicable CUSIP Number) in all disclosure described in Sections 4 and 5 of this Agreement.

4. Annual Financial Information Disclosure. Subject to Section 9 of this Agreement, CCCFA hereby covenants that it will disseminate or cause to be disseminated on its behalf its Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth in *Exhibit I*) to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information and by such time so that such entities receive the information by the dates specified. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, CCCFA will disseminate a statement to such effect as part of the Annual Financial Information for the year in which such event first occurs.

If any amendment or waiver is made to this Agreement, the Annual Financial Information for the year in which such amendment is made (or in any notice or supplement provided to EMMA) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. Reportable Events Disclosure. Subject to Section 8 of this Agreement, CCCFA hereby covenants that it will disseminate in a timely manner (not in excess of ten business days after the occurrence of the Reportable Event) Reportable Events Disclosure to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information. References to “material” in *Exhibit II* refer to materiality as it is interpreted under the Exchange Act. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Bonds or defeasance of any Bonds need not be given under this Agreement any earlier than the notice (if any) of such redemption or defeasance is given to the Bondholders pursuant to the Indenture.

6. Consequences of Failure of CCCFA to Provide Information. CCCFA shall give notice in a timely manner to EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of CCCFA to comply with any provision of this Agreement, the beneficial owner of any Bond may seek mandamus or specific performance by court order, to cause CCCFA to comply with its obligations under this Agreement. The beneficial owners of 25% or more in principal amount of the Bonds outstanding may challenge the adequacy of the information provided under this Agreement and seek specific performance by court order to cause CCCFA to provide the information as required by this Agreement. A default under this Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Agreement in the event of any failure of CCCFA to comply with this Agreement shall be an action to compel performance.

7. Amendments; Waiver. Notwithstanding any other provision of this Agreement, CCCFA by resolution authorizing such amendment or waiver, may amend this Agreement, and any provision of this Agreement may be waived, if:

(a) (i) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, including without limitation pursuant to a “no-action” letter issued by the Commission, change in law, or change in the identity, nature, or status of CCCFA, or type of business conducted; or

(ii) This Agreement, as amended, or the provision, as waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(b) The amendment or waiver does not materially impair the interests of the beneficial owners of the Bonds, as determined either by parties unaffiliated with CCCFA (such as the Trustee), or by approving vote of Bondholders pursuant to the terms of the Indenture at the time of the amendment.

In the event that the Commission, the MSRB or other regulatory authority shall approve or require Annual Financial Information Disclosure or Reportable Events Disclosure to be made to a central post office, governmental agency or similar entity other than EMMA or in lieu of EMMA, CCCFA shall, if required, make such dissemination to such central post office, governmental agency or similar entity without the necessity of amending this Agreement.

8. Termination of Undertaking. The Undertaking of CCCFA shall be terminated hereunder if CCCFA no longer has any legal liability for any obligation on or relating to repayment of the Bonds under the Indenture. CCCFA shall give notice to EMMA in a timely manner if this Section is applicable.

9. Dissemination Agent. CCCFA may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Agreement, and may discharge any such Dissemination Agent with or without appointing a successor Dissemination Agent.

10. Additional Information. Nothing in this Agreement shall be deemed to prevent CCCFA from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Reportable Event, in addition to that which is required by this Agreement. If CCCFA chooses to include any information from any document or notice of occurrence of

a Reportable Event in addition to that which is specifically required by this Agreement, CCCFA shall have no obligation under this Agreement to update such information or include it in any future disclosure or notice of occurrence of a Reportable Event. If the name of CCCFA is changed, CCCFA shall disseminate such information to EMMA.

11. Beneficiaries. This Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Agreement shall inure solely to the benefit of CCCFA, the Dissemination Agent, if any, and the beneficial owners of the Bonds, and shall create no rights in any other person or entity.

12. Recordkeeping. CCCFA shall maintain records of all Annual Financial Information Disclosure and Reportable Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. Assignment. CCCFA shall not transfer its obligations under the Indenture unless the transferee agrees to assume all obligations of CCCFA under this Agreement or to execute an Undertaking under the Rule.

14. Governing Law. This Agreement shall be governed by the laws of the State of California.

CALIFORNIA COMMUNITY CHOICE FINANCING
AUTHORITY

By _____
Its

EXHIBIT I

ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

“*Annual Financial Information*” means financial information and operating data with respect to the Clean Energy Project, including:

- (a) with respect to the Project Participant updated information under the headings “Customers – General,” “Customers – Customer Opt-Out Rate and Customer Retention,” “Service Rates – Current and Historical Rate Information,” “Sources of Energy – Energy Purchases,” “Financial Information – Results of Operations,” “Financial Information – Assets, Liabilities, Deferred Inflows or Resources and Net Position” and “Financial Information – Other Liquidity Sources” set forth APPENDIX A to the Official Statement;
- (b) the quantities of Energy from the Clean Energy Project sold by CCCFA, whether to the Project Participant or others; and
- (c) such other information and data as CCCFA may deem necessary in order to comply with the requirements of the Rule.

“*Audited Financial Statements*” means the audited financial statements of CCCFA, in each case for the most recent fiscal year (commencing with the fiscal year ended December 31, 2021), in each case prepared in accordance with generally accepted accounting principles as promulgated to comply with governmental entities from time to time (or such other accounting principles as may be applicable to CCCFA, as the case may be, in the future pursuant to applicable law).

All or a portion of the Annual Financial Information and the Audited Financial Statements set forth above may be included by reference to other documents which have been submitted to EMMA or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available on EMMA. The final official statement need not be available from the Commission. CCCFA shall clearly identify each such item of information included by reference.

Annual Financial Information with respect to the Project Participant will be submitted to EMMA by 200 days after end of the Project Participant’s fiscal year, being June 30.

Annual Financial Information with respect to CCCFA (*i.e.*, the information described in clauses (b) and (c) of the definition of Annual Financial Information) will be submitted to EMMA by 200 days after end of CCCFA’s fiscal year.

Audited Financial Statements as described above should be filed at the same times as the Annual Financial Information. If Audited Financial Statements are not available when such Annual Financial Information is filed, unaudited financial statements shall be included. Audited Financial Statements will be submitted to EMMA no later than 30 days after availability to CCCFA.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Agreement, CCCFA will disseminate a notice of such change as required by Section 4.

EXHIBIT II

EVENTS WITH RESPECT TO THE BONDS FOR WHICH REPORTABLE EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
7. Modifications to the rights of security holders, if material
8. Bond calls, if material, and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar event of the obligated person*
13. The consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material

* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

15. Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties
17. The receipt by CCCFA of a Monthly Ledger Report that includes a credit to any Non-Private Business Sales Ledger or any Private Business Sales Ledger that has not been reversed within twelve months of the date of such credit
18. The receipt by CCCFA of a Monthly Ledger Report that shows that a Remarketing Non-Default Termination Event has occurred

1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
TEL 215.665.8500
FAX 215.864.8999
www.ballardspahr.com

APPENDIX E

FORM OF OPINION OF BOND COUNSEL

[CLOSING DATE]

California Community Choice Financing Authority
San Rafael, California

Re: California Community Choice Financing Authority
Clean Energy Project Revenue Bonds, Series 2022B-1 (Green Bonds) (Term Rate), and
Clean Energy Project Revenue Bonds, Series 2022B-2 (Green Bonds) ([SIFMA/SOFR] Index
Rate)

Ladies and Gentlemen:

We have acted as bond counsel to California Community Choice Financing Authority (the “Issuer”) in connection with issuance of \$[B-1 PAR] aggregate principal amount of California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022B-1 (Green Bonds) (Term Rate) (the “Series 2022B-1 Bonds”) and \$[B-2 PAR] aggregate principal amount of California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022B-2 ([SIFMA/SOFR] Index Rate) (the “Series 2022B-2 Bonds” and, together with the Series 2022B-1 Bonds, the “Bonds”), issued pursuant to a Trust Indenture, dated as of [December] 1, [2022] (the “Indenture”), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). The Indenture provides that the Bonds are issued for the purpose of financing the Cost of Acquisition of the Clean Energy Project. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

The Issuer is authorized under the Joint Exercise of Powers Act (the “Act”) constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended or supplemented from time to time, to issue the Bonds to finance the Cost of Acquisition of the Clean Energy Project.

In such connection, we have reviewed the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Commodity Swap, the Seller Swap (as defined in the Prepaid Energy Sales Agreement), the Tax Certificate and Agreement, dated the date hereof (the “Tax Certificate”), opinions of counsel to the Issuer and the Trustee, certificates of the Issuer, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

California Community Choice Financing Authority
[CLOSING DATE]
Page 2

We have examined such proceedings, documents, statutes and decisions, as we consider necessary as the basis for this opinion, including, *inter alia*, the Act and an executed and authenticated Bond. We assume that all other Bonds have been similarly executed and authenticated. We also assume that all documents, records, certifications and other instruments examined by us are genuine (including the signatures thereon), accurate and complete and we have not undertaken, by independent investigation, to verify the factual matters set forth in any such documents, records, certifications or other instruments.

The rights and obligations under the Bonds, the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Commodity Swap, the Seller Swap, the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public entities in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or having the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Our services did not include financial or other non-legal advice.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding limited obligations of the Issuer.
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Trust Estate, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, and a valid pledge of the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparty.
3. Interest on the Bonds [(including original issue discount)] is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Bonds, assuming the accuracy of the certifications of the Issuer and continuing compliance by the Issuer with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"). Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals; however, such interest is taken into account in determining the adjusted financial statement income of applicable corporations, as provided in the Code, for purposes of computing the alternative minimum tax imposed on such corporations for tax years beginning after December 31, 2022. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds.
4. Under existing laws as enacted and construed on the date of initial delivery of the Bonds, interest on the Bonds is exempt from State of California personal income taxes. We express no opinion

California Community Choice Financing Authority
[CLOSING DATE]
Page 3

regarding any other state or local tax consequences arising with respect to the ownership, sale or disposition of, or the amount, accrual or receipt of interest on, the Bonds, including, but not limited to, whether the interest on the Bonds is exempt from taxation under the laws of any jurisdiction other than the State of California.

In rendering the opinion set forth in paragraph 3, we have assumed compliance with all covenants and agreements contained in the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes.

Our engagement as bond counsel imposed no duty on us (a) to undertake any investigation as to either: (i) the adequacy of the security for the Bonds, (ii) the business or financial condition of the Issuer, and (iii) the veracity of any representations or certification made by the Issuer on which we have relied, or (b) to prepare, file or monitor the filing of continuation statements. We assume no obligation to file continuation statements under the Uniform Commercial Code of any jurisdiction, or to advise you to do so.

Our opinions represent our legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion and are not a guarantee of a result. This opinion letter is given solely for the benefit of the addressees and their successors and assigns. This opinion letter is not intended to be employed in any transaction other than the one described above and is being delivered to the addressees with the understanding that it may not be published, quoted, relied on or referred to by, and copies may not be delivered or made available to, in whole in or part, any other person or entity (other than the addressees' counsel or any applicable rating agency) or used for any other purpose without the express prior written consent of this firm in each instance.

We render this opinion as of the date hereof on the basis of federal law and the laws of the State of California as enacted and construed on the date hereof. We express no opinion as to any matter not set forth in the numbered paragraphs herein, including, without limitation, the accuracy or completeness of the preliminary or final official statement or other documents prepared or statements made in connection with the offering and sale of the Bonds, and make no representation that we have independently verified the contents thereof.

Sincerely yours,

California Community Choice Financing Authority
[CLOSING DATE]
Page 4

APPENDIX F

FORM OF SECOND PARTY OPINION REGARDING GREEN BOND DESIGNATION

APPENDIX G

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 H

REDEMPTION PRICE OF THE BONDS

The following table sets forth the Redemption Price of the Bonds (being the Amortized Value of the Series 2022[B]-1 Bonds and 100% of the principal amount of the Index Rate 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.

<u>REDEMPTION DATE</u>	<u>REDEMPTION PRICE</u>

APPENDIX I

SCHEDULE OF TERMINATION PAYMENTS

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 applicable Fixed Price(s) for Energy (as defined in the CCCFA Commodity Swap), minus (ii) the Specified Discount then in effect.

MONTH OF EARLY TERMINATION

TERMINATION PAYMENT



First Prepay Timeline

June-2019	SVCE presents Prepay Structure Overview Presentation (developed by Goldman Sachs) to Finance and Admin Committee
Aug-2019	SVCE presents a brief verbal update on prepay process to Finance and Admin Committee
Sept-2019	SVCE and PFM Financial Advisors provide an update on the upcoming RFP process to Finance and Admin Committee
Nov-2019	SVCE provides Prepay RFP Overview to Executive Committee - PFM issues RFP to select Prepay Bank Supplier on behalf of EBCE and SVCE on Nov 12th - RFP Proposals were due December 5th
Jan-2020	SVCE presents Prepay Structure Overview to Finance and Admin Committee
Spring-2020	SVCE and EBCE conduct RFP evaluations to select Prepay Bank Supplier
July-2020	SVCE and EBCE select Morgan Stanley as Prepay Bank Supplier
Aug-2020	SVCE provides Prepay Status Report to Finance and Admin Committee
Sept-2020	SVCE provides Board with Prepay Overview on preparing for a Prepay Transaction SVCE provides Prepay Status Report to Finance and Admin Committee
Oct-2020	SVCE Board Authorizes CEO to enter legal service agreements to finalize Prepayment Transaction (Orrick, Herrington & Sutcliffe and Chapman & Cutler LLP)
Nov-2020	SVCE provides Prepay Status Report to Finance and Admin Committee
Mar-2021	SVCE provides Prepay Status Report to Finance and Admin Committee SVCE provides Prepay Status Report to Executive Committee
April-2021	SVCE Board Approves Participation in the California Community Choice Financing Authority Joint Powers Authority
Aug-2021	The Finance and Admin Committee reviews the Prepay Transaction and votes to recommend Board approval. Board authorizes execution of the first Prepay Transaction subject to parameters including that bonds are not obligations of SVCE, size of the bonds, and minimum savings target.
Sept-2021	Sept 9, 2021 bonds priced
Jan-2022	Power delivery under Prepay begins



Summary of the Details of the First Prepay Transaction

Aggregate Principal Bond Amount	\$1,234,720,000 (SVCE and EBCE combined)
Total Bond Proceeds	\$1,475,895,642.5 (SVCE and EBCE combined)
Municipal Bond Rating	A1
Green Certification	Designated Green Bonds by Kestrel Verifiers
Initial Bond Pricing Period	10 years. - After the initial period, bonds will be repriced per the negotiated repricing agreement, and a new discount will be established based on the then prevailing market conditions.¹
Final Bond Maturity Date	February 1, 2052.
Discount Achieved	\$4.38 per MWh, about 10% of the energy cost of SVCE's 3-year transaction initially assigned into the Prepay. ~\$1.9 million per year for SVCE during the initial bond pricing period of ten years.
Energy Volume Supported by Bond Proceeds	109 MW, of which SVCE's share is 50 MW (about 11% of load) and EBCE's share is 59 MW for approximately the first ten years of the transaction; after that, the same proportional volume split will be maintained between SVCE and EBCE.

Summary of the Transaction Cost Breakdown (\$000)

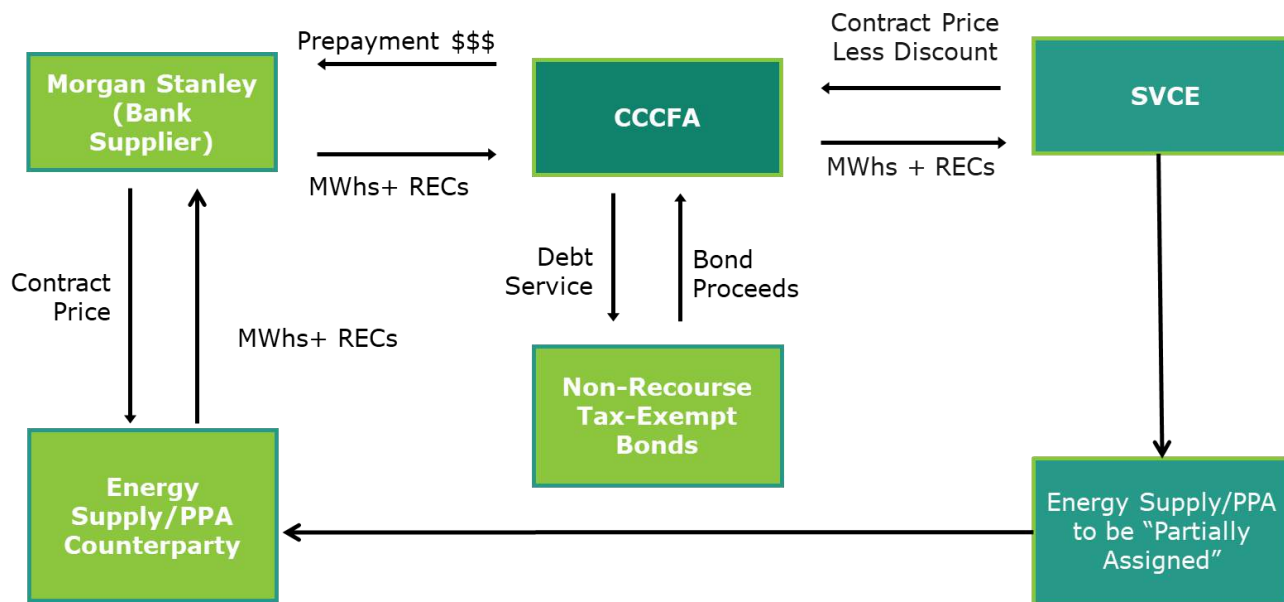
Bond and Tax Counsel: Orrick, Herrington & Sutcliffe	425
Credit Rating: Moody's	315
Issuer's Counsel and Disclosure Counsel: Chapman & Cutler LLP	310
Municipal Advisor: Public Financial Management	250
Investment Advisor: Public Financial Management Asset Mgmt	42
Trustee: Bank of New York (BNY)	32
Trustee Counsel: BNY Counsel	35
Printing Cost	3
Contingency/Other	10
Total COI	1,422
Morgan Stanley Underwriting	6,341
Total	7,763

¹ The repricing agreement has a minimum savings requirement of \$2 per MWh.



Overview of the Prepay structure

Structural Overview of Power Prepay



Under the existing, non-Prepay, structure, SVCE has Power Purchase Agreements (PPA) and other carbon-free energy transactions with a 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 contract price. Now, the Energy Supplier will provide the assigned quantity of energy with any associated environmental credits to Morgan Stanley. Morgan Stanley will pay the contract price to the Energy Supplier.
2. SVCE, along with the other initial founding member CCAs¹, created the California Community Choice Financing Authority (CCCFA), a separate legal entity that can issue tax-exempt municipal bonds.
3. CCCFA issues non-recourse tax-exempt bonds secured by the contractual rights and transaction cashflows under 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 transaction fees, and pays Morgan Stanley the present value of energy cost and any environmental credits that Morgan Stanley will deliver to CCCFA over the 30-year term of the transaction under a prepaid power agreement.

¹SVCE along with Central Coast Community Energy (3CE), East Bay Community Energy (EBCE), and Marin Clean Energy (MCE), as the first set of founding members, established CCCFA.



5. SVCE and CCCFA execute a power supply agreement. Under this agreement, SVCE pays CCCFA the initial contract price less a discount as CCCFA delivers to SVCE the energy and environmental credits it receives from Morgan Stanley.
6. CCCFA uses payments received from SVCE to pay interest and principal payments to the Bondholders.

Under the prepayment structure, SVCE receives the same energy and environmental credits from the Energy Supplier (indirectly via Morgan Stanley and then CCCFA) but for a lower price. The savings or lower price source 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. 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 can reduce the cost of energy purchases that are delivered under this structure.

The bonds can have an initial term of about 5-10 years, and SVCE will not execute the transactions unless the Board-authorized savings can be realized. At the end of the initial term, the bonds will be refinanced, and the terms of the discount will be set per a Repricing Agreement, which will also specify a minimum discount threshold.

The risks to SVCE are minimal as the debt will not be recourse to SVCE. 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 the execution of the transaction and will be financed from the bond proceeds.



Estimated Summary of the Transaction Cost Breakdown (\$000)

Bond and Tax Counsel: Ballard Spahr	300
Credit Rating: Moody's	230
Issuer's Counsel and Disclosure Counsel: Chapman & Cutler LLP	200
Municipal Advisor: Public Financial Advisors LLC	175
Investment Advisor	42
Trustee: Bank of New York (BNY)	32
Trustee Counsel: BNY Counsel	35
Green Bond Second Party Opinion (Kestrel Verifiers)	25
Printing Cost	3
Contingency/Other	10
Total COI	1,052
Morgan Stanley Underwriting	5,000
Underwriters Counsel	115
Miscellaneous	50
Total	6,217

Staff Report – Item 4

Item 4: Community Resilience Program Update

From: Girish Balachandran, CEO

Prepared by: Zoe Elizabeth, Deputy Director of Decarbonization Programs and Policy
Jessica Cornejo, Program Specialist - Policy & Government Initiatives

Date: 11/9/2022

RECOMMENDATION

Staff requests that the Board of Directors receive an update from the Decarbonization Programs and Policy team on the Community Resilience Program.

BACKGROUND

As a part of the 2020 Customer Relief and Community Resilience package, SVCE launched the Community Resilience Program to provide site-level investments, technical support, and resources for the member jurisdictions. Investments include \$800K in planning grants and \$4M in capital project grants to help our member jurisdictions plan for and protect against the increasing impacts of power outages caused by high-heat events, wildfires, and PG&E's related Power Safety Shut-offs. Planning grants must be spent by December 2022, and capital grants must be spent by December 2023.

All member jurisdictions have an active grant project in progress, and two jurisdictions have completed projects. Staff will continue to support the member jurisdictions with technical assistance and identifying additional grant opportunities.

An initial update was provided to the Executive Committee at the March 2022 executive meeting.

ANALYSIS & DISCUSSION

In an effort to continue communications with the Board of Directors on the Community Resilience Program, staff will provide a presentation with member jurisdiction status updates and highlight upcoming deadlines.

STRATEGIC PLAN

These efforts support SVCE's Strategic Plan Goal 10, "coordinate development of decarbonization and resilience strategy, lead design of local policy, and design and deploy programs."

FISCAL IMPACT

N/A

ATTACHMENTS

1. This presentation is posted to the SVCE website.

Staff Report – Item 5

Item 5: New Construction Reach Code Update

From: Girish Balachandran, CEO

Prepared by: Zoe Elizabeth, Deputy Director of Decarbonization Programs and Policy
Justin Zagunis, Director of Decarbonization Programs and Policy

Date: 11/9/2022

RECOMMENDATION

Staff requests that the Board of Directors receive an update from the Decarbonization Programs and Policy team on New Construction Reach Codes.

BACKGROUND

In 2019, SVCE offered technical support to member jurisdictions that were evaluating options for amending the state's 2020 building code. Eleven of SVCE's jurisdiction's passed reach codes applying to the 2019 building code. These reach codes (with the exception of those passed by Morgan Hill and Campbell) will expire 12/31/2022.

Staff is in the process of supporting member agencies with core technical assistance and supportive elements, to adopt, renew, or enhance these codes. In addition, staff is in the process of developing resources that will support policies for existing building electrification.

An initial update was provided to the Board of Directors at the March 9, 2022 board meeting, with additional updates in April, May, June, August, September, and October.

ANALYSIS & DISCUSSION

In an effort to continue communications with the Board of Directors on reach codes, staff will provide a presentation with status updates and highlight upcoming actions/priorities.

STRATEGIC PLAN

These efforts support SVCE's Strategic Plan Goal 10, "coordinate development of decarbonization and resilience strategy, lead design of local policy, and design and deploy programs."

FISCAL IMPACT

N/A

ATTACHMENTS

1. This presentation is posted to the SVCE website.

Silicon Valley Clean Energy Board of Directors Meeting

November 9, 2022

Appendix A

Power Resource Contracts Executed by CEO

Calpine Deal:
CES Sale to SVCE

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), and **Calpine Energy Services, L.P.**, a Delaware limited partnership ("Seller"), each individually a "Party" and together the "Parties", dated as of September 26, 2022 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** "Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.2** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.7** "CAISO" means the California Independent System Operator or its successor.
- 1.8** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.10** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.11** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.12** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

Calpine Deal:
CES Sale to SVCE

- 1.13** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.14** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 (as such amount may be adjusted pursuant to Section 4.4).
- 1.15** “Control Area” has the meaning set forth in the Tariff.
- 1.16** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, 20-06-002, 20-06-028 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.17** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.18** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.21** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.23** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.24** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.25** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.26** “Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.27** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

Calpine Deal:
CES Sale to SVCE

- 1.28** “GADS” means the Generating Availability Data System or its successor.
- 1.29** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.30** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) 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 (iii) any court or governmental tribunal.
- 1.31** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.33** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.34** “LRA” has the meaning set forth in the Tariff.
- 1.35** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.36** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.37** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.38** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.39** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.40** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42** “Non-Availability Charges” has the meaning set forth in the Tariff.

Calpine Deal:
CES Sale to SVCE

- 1.43** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.44** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.45** “Parallel Contract” means that certain Master Power Purchase and Sale Agreement Confirmation Letter between Calpine Energy Services, L.P. as “Seller” and Silicon Valley Clean Energy Authority as “Buyer” dated as of the Confirmation Effective Date.
- 1.46** “Parallel Contract Quantity” means the amount of “Contract Quantity” specified in the Parallel Contract.
- 1.47** “Parallel Contract Reduction” has the meaning specified in Section 3.4 hereof.
- 1.48** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.49** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), 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.
- 1.50** “Product” has the meaning specified in Article 3 hereof.
- 1.51** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.52** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.53** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.54** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.55** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.56** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.57** “Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Article 2 hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.5.

Calpine Deal:
CES Sale to SVCE

- 1.58** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.59** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.60** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.62** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.63** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.64** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.65** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.66** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.67** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.68** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

Calpine Deal:
CES Sale to SVCE

2.
UNIT INFORMATION

Name:	Russell City Energy Center
Location:	CAISO System
CAISO Resource ID:	RUSCTY_2_UNITS
Resource Type:	Natural Gas
Resource Category (1, 2, 3 or 4):	4
Point of interconnection with the CAISO Controlled Grid ("Substation"):	
Path 26 (North, South or None):	None
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	N/A
Run Hour Restrictions:	N
LAR Attributes (Yes/No):	N
If yes: Local Capacity Area (as of Confirmation Effective Date):	N/A
Product Type (Flexible/Generic):	Generic
If Generic: Unit NQC (as of the Confirmation Effective Date):	Varies
If Flexible: Unit EFC (as of the Confirmation Effective Date):	N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):	N/A

3.
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 ☒ **RAR Attributes**

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☐ **Flexible RA Product**

Calpine Deal:
CES Sale to SVCE

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Additionally, if there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason (the quantity so reduced or not delivered is the "Parallel Contract Reduction"), then Seller may elect to reduce the Contract Quantity for the same Showing Month in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.

DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be August 1, 2023 through October 31, 2023, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

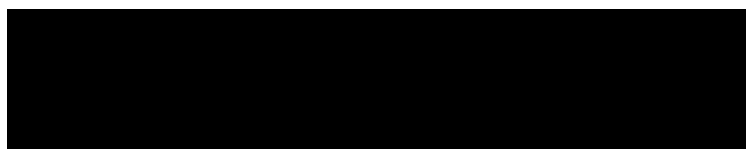
4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)



Calpine Deal:
CES Sale to SVCE



4.4 **Adjustments to Contract Quantity**

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such

Calpine Deal:
CES Sale to SVCE

qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

- (e) Parallel Contract Reduction. If there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason, then Seller may elect to reduce the Contract Quantity in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4, Force Majeure or any Parallel Contract Reduction and (ii) Seller has notified Buyer of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month, (A) with respect to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure, no later than the Notification Deadline, or (B) with respect to any Parallel Contract Reduction, no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that

Calpine Deal:
CES Sale to SVCE

the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract 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 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 due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Calpine Deal:
CES Sale to SVCE

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

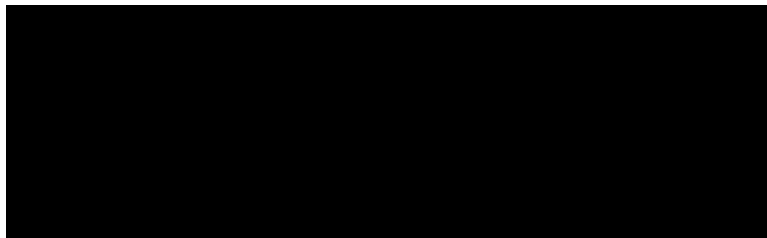
- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Notwithstanding anything to the contrary in the Master Agreement, the Monthly RA Capacity Payment due hereunder shall be netted and offset against the "Monthly RA Capacity Payment" due under the Parallel Contract, and the Party owing the resulting positive amount shall pay that amount to the other Party in accordance with the Master Agreement.

RA CAPACITY PRICE TABLE



The table content has been redacted with a solid black box.

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be

Calpine Deal:
CES Sale to SVCE

entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

**5.
CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

**6.
RESERVED**

**7.
OTHER BUYER AND SELLER COVENANTS**

- 7.1.** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by

Calpine Deal:
CES Sale to SVCE

the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

Calpine Deal:
CES Sale to SVCE

8.
CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.
BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. 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 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.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10.
MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will 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 Buyer.

11.
COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

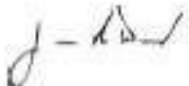
[SIGNATURE PAGE FOLLOWS]

Calpine Deal:
CES Sale to SVCE

Calpine Deal:
CES Sale to SVCE

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: 
Name: Jim Wood

Title: Vice President

Silicon Valley Clean Energy Authority

DocuSigned by:

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

Calpine Deal:
CES Sale to SVCE

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), and **Calpine Energy Services, L.P.**, a Delaware limited partnership ("Seller"), each individually a "Party" and together the "Parties", dated as of September 26, 2022 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** "Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.2** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.7** "CAISO" means the California Independent System Operator or its successor.
- 1.8** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.10** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.11** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.12** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

Calpine Deal:
CES Sale to SVCE

- 1.13** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.14** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 (as such amount may be adjusted pursuant to Section 4.4).
- 1.15** “Control Area” has the meaning set forth in the Tariff.
- 1.16** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, 20-06-002, 20-06-028 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.17** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.18** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.21** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.23** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.24** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.25** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.26** “Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.27** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

Calpine Deal:
CES Sale to SVCE

- 1.28** “GADS” means the Generating Availability Data System or its successor.
- 1.29** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.30** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) 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 (iii) any court or governmental tribunal.
- 1.31** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.33** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.34** “LRA” has the meaning set forth in the Tariff.
- 1.35** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.36** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.37** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.38** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.39** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.40** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42** “Non-Availability Charges” has the meaning set forth in the Tariff.

Calpine Deal:
CES Sale to SVCE

- 1.43** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.44** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.45** “Parallel Contract” means that certain Master Power Purchase and Sale Agreement Confirmation Letter between Calpine Energy Services, L.P. as “Seller” and Silicon Valley Clean Energy Authority as “Buyer” dated as of the Confirmation Effective Date.
- 1.46** “Parallel Contract Quantity” means the amount of “Contract Quantity” specified in the Parallel Contract.
- 1.47** “Parallel Contract Reduction” has the meaning specified in Section 3.4 hereof.
- 1.48** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.49** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), 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.
- 1.50** “Product” has the meaning specified in Article 3 hereof.
- 1.51** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.52** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.53** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.54** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.55** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.56** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.57** “Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Article 2 hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.5.

Calpine Deal:
CES Sale to SVCE

- 1.58** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.59** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.60** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.62** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.63** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.64** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.65** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.66** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.67** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.68** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

Calpine Deal:
CES Sale to SVCE

2.
UNIT INFORMATION

Name:	Angews Power Plant
Location:	San Jose, CA
CAISO Resource ID:	CALPIN_1_AGNEW
Resource Type:	Natural Gas
Resource Category (1, 2, 3 or 4):	4
Point of interconnection with the CAISO Controlled Grid ("Substation"):	
Path 26 (North, South or None):	North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	
Run Hour Restrictions:	N
LAR Attributes (Yes/No):	Y
If yes: Local Capacity Area (as of Confirmation Effective Date):	Greater Bay Area
Product Type (Flexible/Generic):	Generic
If Generic: Unit NQC (as of the Confirmation Effective Date):	28.56
If Flexible: Unit EFC (as of the Confirmation Effective Date):	N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):	N/A

3.
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 ☒ **RAR and LAR Attributes**

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☐ **Flexible RA Product**

Calpine Deal:
CES Sale to SVCE

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Additionally, if there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason (the quantity so reduced or not delivered is the "Parallel Contract Reduction"), then Seller may elect to reduce the Contract Quantity for the same Showing Month in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be March 1, 2023 through March 31, 2023, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Calpine Deal:
CES Sale to SVCE

Contract Quantity (MWs)



4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall

Calpine Deal:
CES Sale to SVCE

negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

- (e) Parallel Contract Reduction. If there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason, then Seller may elect to reduce the Contract Quantity in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4, Force Majeure or any Parallel Contract Reduction and (ii) Seller has notified Buyer of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month, (A) with respect to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure, no later than the Notification Deadline, or (B) with respect to any Parallel Contract Reduction, no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

Calpine Deal:
CES Sale to SVCE

- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract 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 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 due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

Calpine Deal:
CES Sale to SVCE

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

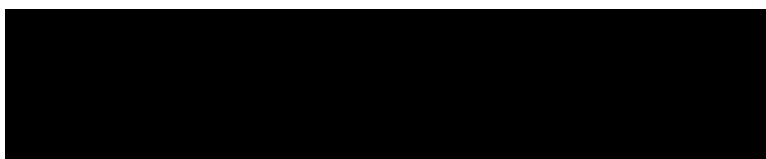
- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Notwithstanding anything to the contrary in the Master Agreement, the Monthly RA Capacity Payment due hereunder shall be netted and offset against the "Monthly RA Capacity Payment" due under the Parallel Contract, and the Party owing the resulting positive amount shall pay that amount to the other Party in accordance with the Master Agreement.

RA CAPACITY PRICE TABLE



4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding

Calpine Deal:
CES Sale to SVCE

Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

- 7.1.** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer

Calpine Deal:
CES Sale to SVCE

RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

Calpine Deal:
CES Sale to SVCE

8.
CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.
BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. 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 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.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10.
MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will 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 Buyer.

11.
COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

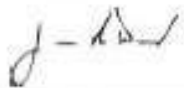
[SIGNATURE PAGE FOLLOWS]

Calpine Deal:
CES Sale to SVCE

Calpine Deal:
CES Sale to SVCE

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: 
Name: Jim Wood

Title: Vice President

Silicon Valley Clean Energy Authority

DocuSigned by:

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

Calpine Deal:
SVCE Sale to CES

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership ("Buyer"), and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of September 26, 2022 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** "Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.2** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.7** "CAISO" means the California Independent System Operator or its successor.
- 1.8** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.10** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.11** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.12** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

Calpine Deal:
SVCE Sale to CES

- 1.13** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.14** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 (as such amount may be adjusted pursuant to Section 4.4).
- 1.15** “Control Area” has the meaning set forth in the Tariff.
- 1.16** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, 20-06-002, 20-06-028 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.17** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.18** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.21** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.23** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.24** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.25** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.26** “Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.27** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

Calpine Deal:
SVCE Sale to CES

- 1.28** “GADS” means the Generating Availability Data System or its successor.
- 1.29** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.30** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) 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 (iii) any court or governmental tribunal.
- 1.31** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.33** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.34** “LRA” has the meaning set forth in the Tariff.
- 1.35** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.36** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.37** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.38** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.39** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.40** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42** “Non-Availability Charges” has the meaning set forth in the Tariff.

Calpine Deal:
SVCE Sale to CES

- 1.43** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.44** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.45** “Parallel Contract” means that certain Master Power Purchase and Sale Agreement Confirmation Letter between Calpine Energy Services, L.P. as “Seller” and Silicon Valley Clean Energy Authority as “Buyer” dated as of the Confirmation Effective Date.
- 1.46** “Parallel Contract Quantity” means the amount of “Contract Quantity” specified in the Parallel Contract.
- 1.47** “Parallel Contract Reduction” has the meaning specified in Section 3.4 hereof.
- 1.48** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.49** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), 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.
- 1.50** “Product” has the meaning specified in Article 3 hereof.
- 1.51** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.52** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.53** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.54** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.55** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.56** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.57** “Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Article 2 hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.5.

Calpine Deal:
SVCE Sale to CES

- 1.58** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.59** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.60** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.62** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.63** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.64** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.65** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.66** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.67** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.68** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

Calpine Deal:
SVCE Sale to CES

2.
UNIT INFORMATION

Name:	Mariposa Energy
Location:	Byron, CA
CAISO Resource ID:	KELSO_2_UNITS
Resource Type:	Combustion Turbine
Resource Category (1, 2, 3 or 4):	4
Point of interconnection with the CAISO Controlled Grid ("Substation"):	NP-15
Path 26 (North, South or None):	North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	N/A
Run Hour Restrictions:	N
LAR Attributes (Yes/No):	Y
If yes: Local Capacity Area (as of Confirmation Effective Date):	Bay Area
Product Type (Flexible/Generic):	Flexible
If Generic: Unit NQC (as of the Confirmation Effective Date):	N/A
If Flexible: Unit EFC (as of the Confirmation Effective Date):	196.80
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):	1

3.
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 ☒ RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☒ Flexible RA Product

Calpine Deal:
SVCE Sale to CES

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ **Firm RA Product**

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ **Contingent Firm RA Product**

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Additionally, if there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason (the quantity so reduced or not delivered is the "Parallel Contract Reduction"), then Seller may elect to reduce the Contract Quantity for the same Showing Month in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.

DELIVERY AND PAYMENT

4.1 **Delivery Period**

The Delivery Period shall be March 1, 2023 through March 31, 2023, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 **Delivery Point**

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 **Contract Quantity**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)



Calpine Deal:
SVCE Sale to CES

4.4 **Adjustments to Contract Quantity**

- (a) **Planned Outages**: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) **Reductions in Unit NQC**: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) **Reductions in Unit EFC**: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) **UCAP**: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's

Calpine Deal:
SVCE Sale to CES

overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

- (e) Parallel Contract Reduction. If there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason, then Seller may elect to reduce the Contract Quantity in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4, Force Majeure or any Parallel Contract Reduction and (ii) Seller has notified Buyer of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month, (A) with respect to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure, no later than the Notification Deadline, or (B) with respect to any Parallel Contract Reduction, no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

Calpine Deal:
SVCE Sale to CES

- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract 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 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 due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

Calpine Deal:
SVCE Sale to CES

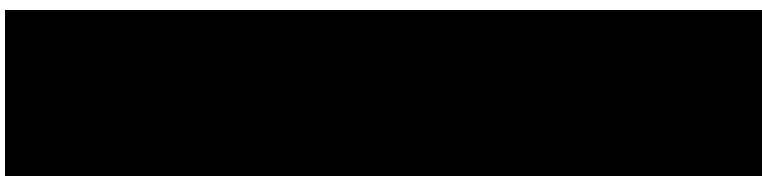
- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Notwithstanding anything to the contrary in the Master Agreement, the Monthly RA Capacity Payment due hereunder shall be netted and offset against the "Monthly RA Capacity Payment" due under the Parallel Contract, and the Party owing the resulting positive amount shall pay that amount to the other Party in accordance with the Master Agreement.

RA CAPACITY PRICE TABLE



4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit,

Calpine Deal:
SVCE Sale to CES

Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5.

CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED

7.

OTHER BUYER AND SELLER COVENANTS

- 7.1.** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:
- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
 - (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

Calpine Deal:
SVCE Sale to CES

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

**8.
CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having

Calpine Deal:
SVCE Sale to CES

jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. 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 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.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10.

MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will 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 Buyer.

11.

COLLATERAL REQUIREMENTS

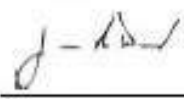
Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE FOLLOWS]

Calpine Deal:
SVCE Sale to CES

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: 
Name: Jim Wood

Title: Vice President

Silicon Valley Clean Energy Authority

DocuSigned by:

By: 5CA64B9AC4C24C3
Name: Girish Balachandran
Title: CEO

Calpine Deal:
SVCE Sale to CES

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership ("Buyer"), and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of September 26, 2022 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** "Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.2** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.7** "CAISO" means the California Independent System Operator or its successor.
- 1.8** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.10** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.11** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.12** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

Calpine Deal:
SVCE Sale to CES

- 1.13** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.14** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 (as such amount may be adjusted pursuant to Section 4.4).
- 1.15** “Control Area” has the meaning set forth in the Tariff.
- 1.16** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, 20-06-002, 20-06-028 and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.17** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.18** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.21** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.23** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.24** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.25** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.26** “Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.27** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

Calpine Deal:
SVCE Sale to CES

- 1.28** “GADS” means the Generating Availability Data System or its successor.
- 1.29** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.30** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) 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 (iii) any court or governmental tribunal.
- 1.31** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.33** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.34** “LRA” has the meaning set forth in the Tariff.
- 1.35** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.36** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.37** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.38** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.39** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.40** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42** “Non-Availability Charges” has the meaning set forth in the Tariff.

Calpine Deal:
SVCE Sale to CES

- 1.43** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.44** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.45** “Parallel Contract” means that certain Master Power Purchase and Sale Agreement Confirmation Letter between Calpine Energy Services, L.P. as “Seller” and Silicon Valley Clean Energy Authority as “Buyer” dated as of the Confirmation Effective Date.
- 1.46** “Parallel Contract Quantity” means the amount of “Contract Quantity” specified in the Parallel Contract.
- 1.47** “Parallel Contract Reduction” has the meaning specified in Section 3.4 hereof.
- 1.48** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.49** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), 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.
- 1.50** “Product” has the meaning specified in Article 3 hereof.
- 1.51** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.52** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.53** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.54** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.55** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.56** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.57** “Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Article 2 hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified in Section 4.5.

Calpine Deal:
SVCE Sale to CES

- 1.58** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.59** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.60** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.62** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.63** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.64** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.65** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.66** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.67** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.68** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

Calpine Deal:
SVCE Sale to CES

2.
UNIT INFORMATION

Name:	BLM EAST Facility
Location:	CAISO System
CAISO Resource ID:	BLM_2_UNITS
Resource Type:	Geothermal
Resource Category (1, 2, 3 or 4):	4
Point of interconnection with the CAISO Controlled Grid ("Substation"):	Southern California Edison via 115kV Inyokern and 230kV Kramer Junction
Path 26 (North, South or None):	South
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	N/A
Run Hour Restrictions:	N
LAR Attributes (Yes/No):	No
If yes: Local Capacity Area (as of Confirmation Effective Date):	N/A
Product Type (Flexible/Generic):	Flexible
If Generic: Unit NQC (as of the Confirmation Effective Date):	N/A
If Flexible: Unit EFC (as of the Confirmation Effective Date):	47
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):	1

Name:	Santa Paula Energy Storage
Location:	132 North 13th Street, Santa Paula CA 93060
CAISO Resource ID:	To Be Assigned by CAISO
Resource Type:	Battery Energy Storage
Resource Category (1, 2, 3 or 4):	1
Point of interconnection with the CAISO Controlled Grid ("Substation"):	TBD
Path 26 (North, South or None):	South
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD
Run Hour Restrictions:	N

Calpine Deal:
SVCE Sale to CES

LAR Attributes (Yes/No):	No
If yes: Local Capacity Area (as of Confirmation Effective Date):	N/A
Product Type (Flexible/Generic):	Flexible
If Generic: Unit NQC (as of the Confirmation Effective Date):	N/A
If Flexible: Unit EFC (as of the Confirmation Effective Date):	30
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):	3

3.

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 ☐ RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☒ Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement

Calpine Deal:
SVCE Sale to CES

Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ **Contingent Firm RA Product**

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Additionally, if there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason (the quantity so reduced or not delivered is the "Parallel Contract Reduction"), then Seller may elect to reduce the Contract Quantity for the same Showing Month in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4. DELIVERY AND PAYMENT

4.1 **Delivery Period**

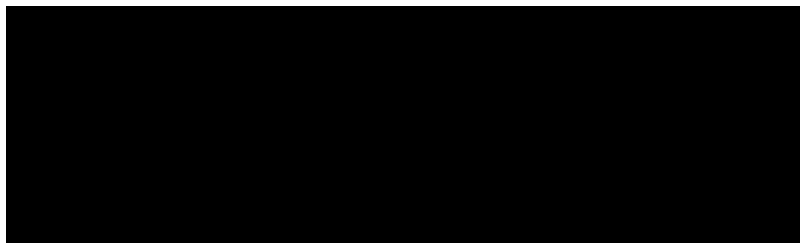
The Delivery Period shall be March 1, 2023 through April 30, 2023, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 **Delivery Point**

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 **Contract Quantity**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:



4.4 **Adjustments to Contract Quantity**

- (a) **Planned Outages**: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

Calpine Deal:
SVCE Sale to CES

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).
- (e) Parallel Contract Reduction. If there is a reduction in or any failure to deliver any portion of the Parallel Contract Quantity for any reason, then Seller may elect to reduce the Contract Quantity in an amount equal to the Parallel Contract Reduction by providing notice to Buyer no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

Calpine Deal:
SVCE Sale to CES

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4, Force Majeure or any Parallel Contract Reduction and (ii) Seller has notified Buyer of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month, (A) with respect to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure, no later than the Notification Deadline, or (B) with respect to any Parallel Contract Reduction, no later than three (3) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract 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 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 due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing

Calpine Deal:
SVCE Sale to CES

Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

Calpine Deal:
SVCE Sale to CES

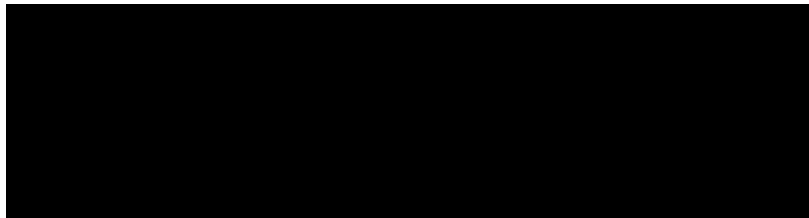
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Notwithstanding anything to the contrary in the Master Agreement, the Monthly RA Capacity Payment due hereunder shall be netted and offset against the "Monthly RA Capacity Payment" due under the Parallel Contract, and the Party owing the resulting positive amount shall pay that amount to the other Party in accordance with the Master Agreement.

RA CAPACITY PRICE TABLE



The table content is redacted with a solid black box.

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

Calpine Deal:
SVCE Sale to CES

5.

CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED

7.

OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other

Calpine Deal:
SVCE Sale to CES

than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

**8.
CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

Calpine Deal:
SVCE Sale to CES

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. 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 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.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10.

MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will 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 Buyer.

11.

COLLATERAL REQUIREMENTS

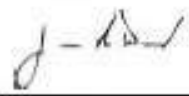
Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE FOLLOWS]

Calpine Deal:
SVCE Sale to CES

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: 
Name: Jim Wood

Title: Vice President

Silicon Valley Clean Energy Authority

DocuSigned by:
By: 
Name: GIRISH Balachandran
Title: CEO

RESOURCE ADEQUACY AGREEMENT COVER SHEET

A. **Parties**

Seller: Baldy Mesa Solar, LLC, a Delaware limited liability company

Buyer: Silicon Valley Clean Energy, a California joint powers authority

B. **Description of Unit**

A grid-connected 75 MW/300 MWh battery energy storage unit, located in San Bernadino County, in the State of California, as further described in Exhibit D.

C. **Product**

Buyer's Capacity Share of all Capacity Attributes available from the Unit.

D. **Delivery Term**

The Delivery Term is ten (10) Contract Years.

E. **Guaranteed Capacity**

The Guaranteed Capacity of the Unit shall be: [REDACTED]

Buyer's Capacity Share shall be [REDACTED]

F. **Contract Price**

The Contract Price shall be [REDACTED]

G. **Seller's Security Amounts**

Development Security [REDACTED]

Performance Security: [REDACTED]

H. **Milestones**

Milestone	Date for Completion
Site Control obtained	9/21/2018
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [X] Mitigated Neg Dec, [] EIR	11/17/2020
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	11/23/2018

Milestone	Date for Completion
Interconnection Agreement executed	11/9/2020
Major equipment procured	12/1/2022
Federal and State discretionary permits obtained	3/17/2022
Guaranteed Construction Start Date	1/1/2023
Network Upgrades completed	3/1/2023
Full Capacity Deliverability Status obtained	3/12/2020
Initial Synchronization	5/15/2023
Expected CAISO Commercial Operation	6/1/2023
Guaranteed Commercial Operation Date	8/1/2023

TABLE OF CONTENTS

COVER SHEET	I
ARTICLE 1: DEFINITIONS	1
ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT	11
2.1 Term.....	11
2.2 Conditions Precedent.....	12
ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT.....	12
3.1 Resource Adequacy Capacity Product.....	12
3.2 Interconnection Capacity.....	13
3.3 [Reserved].	13
3.4 Delivery Point.	13
3.5 Planned Outages.....	13
3.6 Replacement RA.	13
3.7 Delivery of RA.....	14
3.8 Failure to Deliver Product.	14
3.9 [Reserved].	15
3.10 Monthly RA Capacity Payment.....	15
3.11 Allocation of Other Payments and Costs	15
ARTICLE 4: CAISO OFFER REQUIREMENTS	16
ARTICLE 5: EVENTS OF DEFAULT; REMEDIES.....	16
5.1 Events of Default.....	16
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	18
5.3 Net Out of Settlement Amounts	18
5.4 Notice of Payment of Termination Payment.	18
5.5 Disputes with Respect to Termination Payment.	19
5.6 [Reserved].	19
5.7 Seller Pre-COD Liability Limitations.....	19
ARTICLE 6: PAYMENT AND NETTING	19
6.1 Billing Period.	19
6.2 Timeliness of Payment.	19
6.3 Disputes and Adjustments of Invoices.	19
6.4 Netting of Payments	20
6.5 Payment Obligation Absent Netting.....	20
6.6 Security.	20
ARTICLE 7: LIMITATIONS	20
7.1 Limitation of Remedies, Liability and Damages.	20
ARTICLE 8: GOVERNMENTAL CHARGES.....	21
8.1 Cooperation.....	21
8.2 Governmental Charges.....	21

ARTICLE 9: [RESERVED.]	21
9.1 [Reserved.]	Error! Bookmark not defined.
ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS	21
10.1 Mutual Representations and Warranties.	21
10.2 Buyer and Seller Covenants	22
10.3 Seller Representations, Warranties and Covenants.	23
10.4 Buyer Representations, Warranties and Covenants	24
ARTICLE 11: CONFIDENTIALITY	24
ARTICLE 12: BUYER'S RE-SALE OF PRODUCT	25
ARTICLE 13: CHANGE IN LAW	25
ARTICLE 14: COLLATERAL REQUIREMENTS	26
14.1 Development Security	26
14.2 Performance Security.	26
14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.	26
14.4 Buyer Financial Statements.	27
ARTICLE 15: INSURANCE	27
15.1 Insurance.	27
15.2 Evidence of Insurance.	28
ARTICLE 16: UNIT CONSTRUCTION AND COMMERCIAL OPERATION	28
16.1 Construction of the Unit.	28
16.2 Commercial Operation.	29
16.3 Replacement Unit.	31
16.4 Bridge Capacity.	31
ARTICLE 17: FORCE MAJEURE	32
17.1 Definition.	32
17.2 No Liability If a Force Majeure Event Occurs.	33
17.3 Notice.	33
17.4 Termination Following Force Majeure Event.	33
ARTICLE 18: MISCELLANEOUS	33
18.1 Title and Risk of Loss.	33
18.2 Indemnity	34
18.3 Assignment.	34
18.4 Governing Law and Venue.	35
18.5 Notices.	35
18.6 Mobile-Sierra.	36
18.7 General.	36
18.8 Audit.	37
18.9 Forward Contract.	37
18.10 Dispute Resolution.	37

18.11 Execution. 37

18.12 Joint Powers Authority. 37

18.13 Dodd-Frank Act 38

18.14 Market-Based Rate Authority..... 38

18.15 Rules of Interpretation. 38

EXHIBIT A: FORM OF LETTER OF CREDIT A-1

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE B-1

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE C-1

EXHIBIT D: DESCRIPTION OF UNIT D-1

EXHIBIT E: OPERATIONAL CHARACTERISTICS E-1

EXHIBIT F: PROGRESS REPORTING FORM F-1

EXHIBIT G: FORM OF BUYER ASSIGNMENT AGREEMENT G-1

EXHIBIT H: NOTICES..... H-1

RESOURCE ADEQUACY AGREEMENT

This Resource Adequacy Agreement (“Agreement”) is entered into between Baldy Mesa Solar, LLC (“Seller”) and Silicon Valley Clean Energy, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, as of September 29, 2022 (the “Effective Date”). 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, construct, own, and operate the Unit; 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 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.
- 1.4 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.5 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.6 “Bankrupt” means with respect to any entity, such entity (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, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.
- 1.7 “Bridge Addendum” means that certain addendum by and between the Parties which set forth the terms of the purchase of Bridge Capacity.
- 1.8 “Bridge Capacity” has the meaning set forth in Section 16.4(b).

- 1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.10 “Buyer” has the meaning set forth in the Preamble.
- 1.11 “Buyer’s Capacity Share” means the percentage of the Guaranteed Capacity, as set forth in Section E of the Cover Sheet, for which Buyer shall have exclusive rights to all Capacity Attributes available from the Unit, including the Designated RA Capacity.
- 1.12 “CAISO” means the California Independent System Operator or its successor.
- 1.13 “CAISO Balancing Authority Area” has the meaning set forth in the CAISO Tariff.
- 1.14 “CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.
- 1.15 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.16 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.17 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.18 “Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the Unit’s Guaranteed Capacity that can be purchased and sold under CAISO or CPUC market rules, including all RA Capacity.
- 1.19 “Change of Control” means 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 or otherwise ceases to retain the ability to control the decision making of 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 and tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf and subsequent assignee or transferee thereof) shall be excluded from the total outstanding equity interests in Seller.
- 1.20 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.21 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.22 “Claims” means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ 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.

- 1.23 “Commercial Operation” has the meaning set forth in Section 16.2(a).
- 1.24 “Commercial Operation Date” means the date on which Commercial Operation is achieved.
- 1.25 “Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).
- 1.26 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.
- 1.27 “Confidential Information” has the meaning set forth in Article 11.
- 1.28 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.29 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.30 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.31 “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.
- 1.32 “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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.
- 1.33 “CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.
- 1.34 “CPUC” means the California Public Utilities Commission or its successor.
- 1.35 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.36 “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.
- 1.37 “Damage Payment” means the dollar amount that equals the entire Development Security amount and any interest accrued thereon.
- 1.38 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.39 “Delivery Point” has the meaning set forth in Section 3.4.

- 1.40 “Delivery Term” means the period of Contract Years set forth in Section D of the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.41 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, Buyer’s Capacity Share multiplied by the RA Capacity available from the Unit.
- 1.42 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.43 “Development Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.44 “Dispute” has the meaning set forth in Section 18.10(a).
- 1.45 “Dispute Notice” has the meaning set forth in Section 18.10(a).
- 1.46 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.47 “Effective Date” is the date set forth in the Preamble.
- 1.48 “Effective Flexible Capacity” means the net capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.49 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.50 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.51 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.52 “Event of Default” has the meaning set forth in Section 5.1.
- 1.53 “Facility” has the meaning set forth in Exhibit E.
- 1.54 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.55 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.56 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.57 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Rulings.

- 1.58 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.59 “Force Majeure Event” has the meaning set forth in Section 17.1(a).
- 1.60 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.61 “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 a Terminated Transaction, determined in a commercially reasonable manner.
- 1.62 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.63 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) 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 (c) any court or governmental tribunal, but in all cases, excludes both Parties.
- 1.64 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.65 “Guaranteed Capacity” means the maximum dependable operating capacity of the Unit to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, as set forth on the Cover Sheet.
- 1.66 “Guaranteed Commercial Operation Date” is the date set forth in Section H of the Cover Sheet, as such date may be extended as provided herein.
- 1.67 “Guaranteed Construction Start Date” is the date set forth in Section H of the Cover Sheet, as such date may be extended as provided herein.
- 1.68 “Guaranteed Flexible Capacity” means, at any point in time, Buyer’s Capacity Share multiplied by the maximum quantity of Effective Flexible Capacity (in MWs) for which a storage unit having achieved FCDS, and having a storage capacity equal to the Guaranteed Capacity with at least four (4) hours of continuous discharging, and having achieved or exceeded the Operational Characteristics in Exhibit E may be counted in any given Showing Month pursuant to the then-current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.
- 1.69 “Guaranteed Net Qualifying Capacity” means, at any point in time, Buyer’s Capacity Share multiplied by the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage unit having achieved FCDS, and having a storage capacity equal to the Guaranteed Capacity, with at least four (4) hours of continuous discharging, and having achieved or exceeded the Operational Characteristics in Exhibit E may be counted in any given Showing Month pursuant to the then-current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

- 1.70 “Initial Synchronization” has the meaning set forth in the Tariff.
- 1.71 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.72 “Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Interconnection Point under Seller’s Interconnection Agreement, in an amount no less than [REDACTED]
- 1.73 “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.
- 1.74 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.75 “Investment Grade” means a Credit Rating of at least “BBB-” from S&P and/or “Baa3” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.76 “Joint Powers Agreement” means that certain 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 of the State of California (Government Code Section 6500 et seq.).
- 1.77 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.78 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.
- 1.79 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.80 “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 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, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.

- 1.81 “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 a Terminated Transaction, determined in a commercially reasonable manner.
- 1.82 “LRA” has the meaning set forth in the Tariff.
- 1.83 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.84 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.85 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.86 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.87 “MTR Resource” means a resource that meets the requirements of CPUC Decision 21-06-035, including that such resource (a) a first point of interconnection with CAISO Balancing Authority Area, (b) is incremental to the CPUC’s baseline list established pursuant to CPUC Decision 21-06-035, and (c) is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.
- 1.88 “MW” means megawatts measured in alternating current, unless expressly stated in terms of direct current.
- 1.89 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.90 “Network Upgrades” has the meaning set forth in the Tariff.
- 1.91 “Net Qualifying Capacity” or “NQC” means the net capacity of a resource that can be counted towards an LSE’s RAR obligation, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.92 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.93 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.94 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.95 “Notifying Party” has the meaning set forth in Section 18.10(a).
- 1.96 “One-Time Extension” has the meaning set forth in Section 16.4(a).
- 1.97 “Operational Characteristics” means the minimum performance requirements for the Unit, as set forth in Exhibit E.
- 1.98 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outages.

- 1.99** “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is Southern California Edison.
- 1.100** “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.101** “Permitted Transferee” means (a) any Affiliate of Seller or (b) any entity that has, or is controlled by another person or business entity that satisfies the following requirements: (i) 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 (ii) at least two (2) years of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.
- 1.102** “Planned Outage” means, subject to and as further described in the Tariff, 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.
- 1.103** “Product” means Buyer’s Capacity Share of all Capacity Attributes available from the Unit, including the Designated RA Capacity.
- 1.104** “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.105** “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 energy storage system industry during the relevant time period with respect to battery systems 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 in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable 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.
- 1.106** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes, and FCR Attributes of the capacity provided by a Unit.
- 1.107** “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).

- 1.108** “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.109** “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.110** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.111** “RA Penalties” means the Tier 1 System RA Penalties assessed against LSEs by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against LSEs for RA deficiencies. For example, the Tier 1 System RA Penalties applicable under the “2022 Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” are 8.88/kW-month for the months of May through October and \$4.44/kW-month for the months of November to April.
- 1.112** “RA Shortfall Month” means any Showing Month, commencing with the Showing Month that contains the Commercial Operation Date, during which either: (a) the Unit has not achieved Full Capacity Deliverability Status; or (b) the Net Qualifying Capacity of the Unit that was able to be included in Buyer’s Supply Plan for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity for such Showing Month; or (c) the Effective Flexible Capacity of the Unit that was able to be included in Buyer’s Supply Plan for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Flexible Capacity for such Showing Month.
- 1.113** “Recipient Party” has the meaning set forth in Section 18.10(a).
- 1.114** “Regulatory Event” has the meaning set forth in Section 18.7.
- 1.115** “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.116** “Remedial Action Plan” has the meaning specified in Section 16.1(d) hereof.
- 1.117** “Replacement RA” means resource adequacy attributes, as they are identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction, that are (a) equivalent to those that would have been provided by the Unit, (b) located within the CAISO Balancing Authority Area, and (c) to the extent that the Unit would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area as the Unit. For avoidance of doubt, Replacement RA does not need to be provided from an MTR Resource.

1.118



1.119 “Replacement Unit Deadline” has the meaning set forth in Section 16.3(a).

1.120 “Replacement Unit Notice” has the meaning set forth in Section 16.3(a).

1.121 “Residual Unit Commitment” has the meaning set forth in the Tariff.

1.122 “Resold Product” has the meaning set forth in Article 12.

1.123 “Resource Adequacy Plan” has the meaning specified in the Tariff.

1.124 “Resource Adequacy Resource” has the meaning set forth in the Tariff.

1.125 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 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.

1.126 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.127 “RMR Contracts” has the meaning set forth in the Tariff.

1.128 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.129 “Schedule” 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 and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

1.130 “Scheduling Coordinator” has the same meaning as in the Tariff.

1.131 “Security Interest” has the meaning set forth in Section 14.3(a).

1.132 “Seller” has the meaning set forth in the Preamble.

1.133 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.134 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy

Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.135 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.136 “Site Control” means that, for the Term, 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.
- 1.137 “Substitution Rules” has the meaning specified in the Tariff.
- 1.138 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.139 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.140 “Term” has the meaning set forth in Section 2.1(a).
- 1.141 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.142 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.143 “Transmission Provider” means the CAISO.
- 1.144 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.145 “Ultimate Parent” means the AES Corporation.
- 1.146 “Unit” shall mean the energy storage unit described in Section B of the Cover Sheet and Exhibit D hereof.
- 1.147 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Development Security or Performance Security, as applicable, is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Effective Date. All provisions relating to invoicing, payment, delivery,

settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; all rights under Section 16.2(g) survive early termination by Seller pursuant to Section 16.1(c) and Section 16.2(e) for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent.

Seller shall provide notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer except for those CAISO and Governmental Approvals that Seller is required to obtain during the Delivery Term which are not required to commence commercial operations and which Seller reasonably expects to obtain in the ordinary course.

(b) Seller shall have secured Site Control.

(c) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Commercial Operation Date has occurred.

(d) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(e) As of the Commercial Operation Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(f) Seller has obtained Full Capacity Deliverability Status.

(g) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(h) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(i) As of the Commercial Operation Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Commercial Operation Delay Damages.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

(a) During the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Unit at the Contract Price and in accordance with Section 3.10, and Seller shall supply and deliver to Buyer at the Delivery Point all the Product produced by or associated with the Unit in accordance with

the terms of this Agreement. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point. Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit are required to be made available to Buyer as part of this Agreement, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement.

(b) Seller shall obtain Full Capacity Deliverability Status for the Guaranteed Capacity 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. Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status for the Guaranteed Capacity from the CAISO and shall perform all actions necessary to ensure that the Unit qualifies to provide the Designated RA Capacity to Buyer.

3.2 Interconnection Capacity.

Seller shall be responsible for all costs of interconnecting the Unit to the Interconnection Point. Seller shall have and maintain interconnection capacity available or allocable to the Unit that is no less than the Interconnection Capacity Limit throughout the Delivery Term.

3.3 [Reserved].

3.4 Delivery Point.

The "Delivery Point" for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time-period determined by the CAISO for the Unit, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless (i) required to maintain any manufacturer's warranties on Unit equipment; (ii) required in accordance with Prudent Operating Practice to prevent a future unscheduled outage or damage to the Unit, or (iii) otherwise approved by Buyer in writing in its sole discretion.

3.6 Replacement RA.

(a) The "Notification Deadline" for a given Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity and/or Guaranteed Flexible Capacity, as applicable, with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity and/or Effective Flexible Capacity, as applicable, that is able to be included in Buyer's Supply

Plan for such Showing Month; *provided*, that any Replacement RA is communicated by Seller to Buyer no later than the Notification Deadline.

3.7 Delivery of RA.

Seller shall provide Buyer with the Designated RA Capacity and any Replacement RA for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity and any Replacement RA provided to Buyer for each Showing Month. Buyer shall notify Seller five (5) Business Days prior to the Notification Deadline if Seller is to submit less than the full Contract Quantity during the applicable Showing Month.

(b) The Designated RA Capacity and any Replacement RA is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Contract Quantity 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 Notification Deadline for the relevant Showing Month.

(c) At least ninety (90) days before Buyer's annual FCR Showings filing deadline, Seller shall provide Buyer with written notice of the quantity of Guaranteed Flexible Capacity the Unit is expected to provide for the following calendar year. No later than the Notification Deadline, Seller will notify Buyer of the quantity of Effective Flexible Capacity that the Buyer is permitted to include in the Buyer's FCR Showings. Seller is prohibited from selling any Effective Flexible Capacity that Buyer is not able to include in Buyer's CPUC FCR Showings. For the avoidance of doubt, the Monthly RA Capacity Payment shall not be adjusted based upon the quantity of Effective Flexible Capacity Buyer is permitted to include in its CPUC FCR Showings.

3.8 Failure to Deliver Product.

(a) For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.8(b), and/or provide Replacement RA, as set forth in Section 3.6(b), as the exclusive remedy for the Product that Seller fails to convey to Buyer.

(b) For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the product of:

(i) The greater of:

(A) the difference, expressed in kW, of the then applicable Guaranteed Net Qualifying Capacity, minus the then applicable Net Qualifying Capacity that may be included in the Supply Plan for Buyer, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Replacement RA that was able to be included in the Supply Plan for such Showing Month for Buyer; and

(B) the difference, expressed in kW, of the then applicable Guaranteed Flexible Capacity, minus the then applicable Effective Flexible Capacity that may be

included in the Supply Plan for Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in the Supply Plan for such Showing Month for Buyer;

(ii) multiplied by the sum of the CPM Soft Offer Cap and the RA Penalties applicable to such RA Shortfall Month.

3.9 [Reserved].

3.10 Monthly RA Capacity Payment.

Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly RA Capacity Payment equal to the product of (i) the Contract Price, (ii) the Guaranteed Capacity, (iii) Buyer's Capacity Share, and (iv) 1,000; provided, Buyer's obligation to make Monthly RA Capacity Payments shall be pro-rated or suspended during any month in which a Force Majeure Event reduces the delivered Product or prevents Seller delivering Product. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy and environmental attribute sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to

remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Guaranteed Capacity in compliance with the Tariff, including compliance with Minimum Sate of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff, and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) 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 Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written 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 best efforts);
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8) if such failure is not remedied within thirty (30) Business Days after written notice (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 best efforts);
- (d) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation

Delay Damages, a Development Cure Period, and/or a One-Time Extension, the exclusive remedy for which is set forth in Section 16.2(e);

(e) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Replacement RA;

(f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;

(g) such Party becomes Bankrupt;

(h) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 18.3, if applicable;

(i) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(j) 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; or

(k) 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:

(i) 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;

(ii) the issuer of such Letter of Credit becomes Bankrupt;

(iii) 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;

(iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(v) 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;

(vi) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(vii) 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.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a “Terminated Transaction”) between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the Commercial Operation Date and Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer. If the Early Termination Date occurs after the Commercial Operation Date, or if Buyer is the Defaulting Party either before or after the Commercial Operation Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date. The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction; provided, however, that if Buyer is the Non-Defaulting Party, Buyer’s Losses shall be calculated pursuant to Section 3.8(b) for up to an initial six (6) months, as applicable, in determining the amount that Buyer will incur to replace or to provide the economic equivalent of the deliveries in respect of the Terminated Transaction, unless Seller delivers Replacement RA by the Notification Deadline for any Showing Month within such six-month period. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties 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. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 14, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation but in no event later than thirty (30) days, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 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 ten (10) days of receipt of 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; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 [Reserved].

5.7 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 the sum of (A) the Development Security and (B) the total amount of all Commercial Operation Delay Damages owed or paid by Seller pursuant to this Agreement, *provided* that in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount ("Seller Pre-COD Liability Cap").

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices.

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, with notice of the objection given to the other Party. 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 due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such

overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. 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.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement 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, including any related damages calculated pursuant to Sections 3.8 or 16.2(b), 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.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 16.2(b), interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Development Security and Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Development Security or Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.3, THERE IS NO IMPLIED 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. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS 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 ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE. 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. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 CooperationError! Bookmark not defined..

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 9: [RESERVED.]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Product, including the Designated RA Capacity, for the sole benefit of Buyer (or any subsequent purchaser under Article 12). Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Product as RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Designated RA Capacity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Designated RA Capacity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided*, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Facility undertake capital improvements, Facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Product from the Unit, including the Designated RA Capacity;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the Capacity Attributes sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Designated RA Capacity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Designated RA Capacity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the Designated RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least twenty (20) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

(l) As of the Effective Date, that the Unit is eligible to qualify as a MTR Resource.

10.4 Buyer Representations, Warranties and Covenants.

(a) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives 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, (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.

(b) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(c) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

10.5 Prevailing Wage.

Seller shall comply with all 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 10.5 with respect to the Prevailing Wage Requirement will be satisfied upon the execution by Seller’s contractor of a community workforce agreement, work site or project labor agreement, collective bargaining agreement, or other similar agreement related to construction of the Facility.

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose this Agreement, any of the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement (“Confidential Information”) to a third party, except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, request from a regulatory body, 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 rule, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the Disclosing Party, if any, in making such disclosure, or (iv) as may be furnished to a Party’s Affiliates, and to each of such person’s employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such

information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction, provided that such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect and copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement.

(b) Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8.

(c) In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting LSE’s SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Product sold to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Product in such centralized capacity market.

ARTICLE 13: CHANGE IN LAW

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction results in any change in applicable law occurring after the Effective Date that changes the Resource Adequacy Requirements such

that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Change in Law"), then upon the request of the affected Party, the Parties will discuss in good faith potential amendments to this Agreement as the Parties may mutually agree are appropriate to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens and responsibilities of the Parties hereunder; provided however that no Party is obligated to agree to an amendment and further provided that Seller's obligations hereunder are subject to the limitations on Seller's obligations as set forth in Section 10.3(b).

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Development Security.

Seller shall deliver Development Security to Buyer within ten (10) Business Days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days 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 provided that the aggregate amount of any such collected or drawn upon Development Security shall in no event exceed an amount equal to the Seller Pre-COD Liability Cap, and Seller has no obligation to replenish the Development Security in excess thereof. 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.

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect and shall within ten (10) Business Days replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement. Buyer shall return the Performance Security, less the amounts drawn in accordance with this Agreement, once all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) 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 and Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, 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.

(b) Upon or any time after the occurrence 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:

(i) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security and Performance Security, as applicable; and

(iii) Liquidate 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.

(c) 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.

14.4 Buyer Financial Statements.

If, at any time during the Term, Buyer does not have or ceases to have and maintain an Investment Grade Credit Rating, Buyer provide to Seller both upon request and as indicated below: (a) within sixty (60) days following the end of its first, second and third fiscal quarters, or as soon as reasonably possible thereafter, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within two hundred ten (210) days following the end of each fiscal year, or as soon as reasonably possible thereafter, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer's annual report, which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members.

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage. In addition, Seller will require that its contractors comply with such insurance requirements and industry standards as related to the scope of Work. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than one million dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than five million dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000). The amounts of liability insurance described in Section 15.1(b)(i) and this Section 15.1(b)(ii) may be satisfied by primary insurance or by any combination of primary and umbrella insurance.

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Commercial Operation Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. In the event of any material modification, reduction, cancellation or termination of coverage, Seller will provide thirty (30) days prior notice to Buyer or as soon as reasonably possible if thirty (30) days is not available. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND COMMERCIAL OPERATION

16.1 Construction of the Unit.

(a) Construction Start. "Construction Start" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a "notice to proceed" or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit 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 B hereto, and the date certified therein shall be the "Construction Start Date." Seller shall cause the Construction Start Date to be achieved by the Guaranteed Construction Start Date; provided that if Seller does not cause the Construction Start Date by the Guaranteed Construction Start Date, Seller's sole liability and Buyer's sole remedy will be Seller's obligation to provide a Remedial Action Plan as provided in Section 16.1(c).

(b) Progress Reports. The Parties acknowledge that Seller's obligations hereunder are contingent upon the construction and operation of the proposed energy storage system being developed by the Guaranteed Commercial Operation Date. 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 agree to 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 F. 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. Seller shall also provide Buyer with any information in Seller's possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements and integrated resource planning requirements, including providing status reports to the CPUC with respect to the Unit.

(c) Remedial Action Plan; Termination Right. If Seller misses any Milestone by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) to the scheduled Milestone dates, including the cause of the delay (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. Delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent missed Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. In the event Seller misses any Milestone by more than ninety (90) days and Seller and Buyer mutually agree that Seller will not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period, a One-Time Extension or Seller's payment of Commercial Operation Delay Damages, either Party shall have the right, but not the obligation, to terminate this Agreement and Seller will owe Buyer, as liquidated damages, an amount equal to the full Development Security that is required to be posted by Seller pursuant to this Agreement; *provided*, payment of such amount shall constitute liquidated damages and Buyer's sole and exclusive remedy for such termination.

16.2 Commercial Operation.

(a) Commercial Operation. "Commercial Operation" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Unit to occur by the Guaranteed Commercial Operation Date.

(b) Commercial Operation Delay Damages. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Commercial Operation Delay Damages. In no event will Seller be required

to pay Commercial Operation Delay Damages for more than a total of sixty (60) days. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, if Seller has elected to extend the Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 16.2(b).

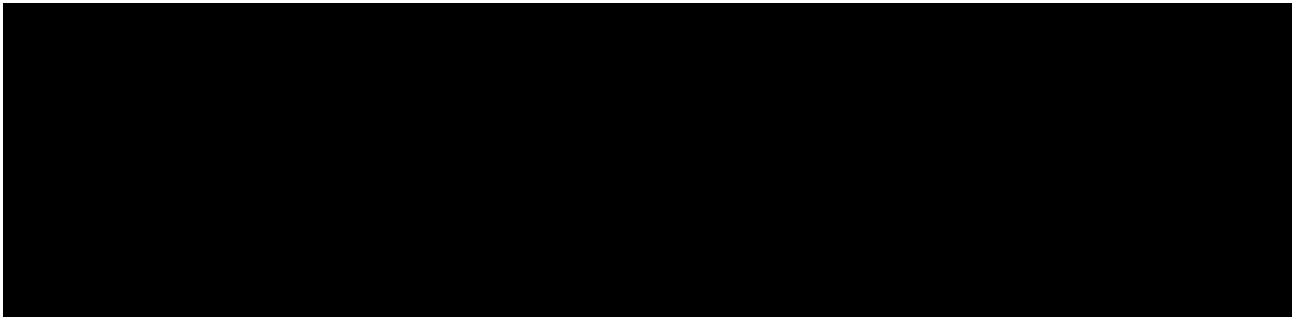
(c) Extension of Guaranteed Milestones. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

(i) The Interconnection Facilities or Network Upgrades, if applicable, are not complete and ready for the Unit 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

(ii) A Force Majeure Event occurs.

(d) Maximum Milestone Extensions. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) shall not exceed two hundred forty (240) days. No extension shall be given if the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines. 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 failure to take such commercially reasonable actions.

(e) Termination for Failure to Achieve Guaranteed Commercial Operation Date. If Seller has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages, a One-Time Extension and/or a Development Cure Period, then either Party has the right, but not the obligation, to terminate this Agreement and, except as otherwise provided in Section 17.4(a), Seller will owe to Buyer as liquidated damages an amount equal to the full Development Security that is required to be posted by Seller pursuant to this Agreement; *provided*, payment of such amount shall constitute liquidated damages and Buyer’s sole and exclusive remedy for such termination.



(g) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by Seller prior to the Commercial Operation Date pursuant to Section 16.1(c) or 16.2(e), neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price, unless the Seller termination is pursuant to a delay caused by a Force Majeure Event, then excluding price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(g) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(g) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(g).

16.3 Replacement Unit

(a) No later than February 1, 2023, (the "Replacement Unit Deadline"), Seller may send notice to Buyer (a "Replacement Unit Notice") offering a Replacement Unit, in each case, such that the terms of this Agreement (*mutatis mutandis*) will apply to such Replacement Unit, instead of the originally contemplated Project.

(b) Buyer will within thirty (30) days after receipt of a Replacement Unit Notice respond to Seller in writing either accepting or rejecting the Replacement Unit, provided that Buyer's acceptance of the Replacement Unit shall not be unreasonably withheld or denied and further provided that if the Replacement Unit satisfies the criteria of the definition thereof and is capable of providing the Product hereunder, then it shall not be reasonable for Buyer to reject such Replacement Unit. If Buyer accepts the Replacement Unit, the Parties will reasonably cooperate to confirm in writing any changes reasonably required to make this Agreement applicable to the Replacement Unit.

(c) If Seller does not provide a Replacement Unit by the Replacement Unit Deadline, then Seller waives its rights under this Section 16.3.

16.4 Bridge Capacity.

(a) On or before June 1, 2023, Seller will have a one-time right, in its sole discretion and without payment of any damages, to extend the Guaranteed Commercial Operation Date for any reason as determined by Seller in its sole discretion ("One-Time Extension") for a period of time up to and including, but not beyond, June 1, 2024, by providing prior written notice to Buyer, which such notice shall include the number of days of extension to the Guaranteed Commercial Operation Date. All of the Milestones set forth on the Cover Sheet, including the Guaranteed Construction Start Date, that have not been completed as of the date of the notice of Seller's exercise of the One-Time Extension right shall also be extended for the same number of days of extension Seller indicates is applicable to the Guaranteed Commercial Operation Date.

(b) In addition to the Parties' rights and obligations under this Agreement with respect to the Unit, in the event Seller extends the Guaranteed Commercial Operation Date beyond August 1, 2023 by Seller's payment of Commercial Operation Delay Damages, a Development Cure Period, and/or a One-Time Extension, Seller agrees to deliver, and Buyer agrees to purchase resource adequacy attributes in the amount set forth in the Bridge Addendum with respect to each Showing Month between August 1, 2023, and the Showing Month that contains the Commercial Operation Date ("Bridge Capacity") in accordance with the terms of the Bridge Addendum. Notwithstanding anything in this Agreement to the contrary, no breach or default of either Party under the Bridge Addendum shall be a breach or default of such Party under this Agreement and the Parties rights and remedies with respect to such breach or default will be as set forth in the Bridge Addendum. No termination of the Bridge Agreement will give rise to any right to terminate this Agreement.

ARTICLE 17: FORCE MAJEURE

17.1 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 commercially 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 and pandemic landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes 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 or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product 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, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event; or (ix) delays in the construction of the Facility or the delivery of

materials necessary to complete the Facility known or that reasonably should have been known to Seller, its existing suppliers or service providers for the Facility as of the Effective Date.

17.2 No Liability If a Force Majeure Event Occurs.

Except as provided in Section 16.2(b) and (c), 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 commercially reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. 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. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

17.3 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*, 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.

17.4 Termination Following Force Majeure Event.

(a) If a Force Majeure Event has occurred prior to the Commercial Operation Date that has caused the cumulative extensions granted under the Development Cure Period to equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions and either Party elects, in its sole discretion, to terminate this Agreement pursuant to Section 16.2(e), then upon such termination and notwithstanding the provisions of Section 16.2(e), neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1 and 16.2(g), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) 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 in any material respect, 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 Notice to the other Party. 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, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 18: MISCELLANEOUS

18.1 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

18.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

18.3 Assignment.

(a) Assignment Generally. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed, and any Change of Control of Seller will be deemed an assignment and will require the prior written consent of Buyer hereunder, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement, including through a Change of Control, to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement, including through a Change of Control, to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry

(b) Notwithstanding the foregoing, after the Commercial Operation Date has occurred, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to any Person acquiring all or substantially all of the renewable energy assets directly or indirectly owned by Seller's Ultimate Parent (whether voluntary or by operation of law and whether by assignment or Change of Control), if, (a) such transferee is a Permitted Transferee; (b) Seller gives Buyer notice at least fifteen (15) Business Days prior to such proposed assignment or Change of Control; (c) except in the case of a Change of Control, Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this agreement upon such transfer or assignment; and (d) Seller has provided Buyer with a certificate signed by the Person to which Seller wishes to assign its interests certifying that such Person meets the definition of a Permitted Transferee (and only if the requirements in subsections (a), (b), (c) and (d) above are satisfied). Neither the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller subsequent to such foreclosure or transfer or assignment in lieu of foreclosure to a Permitted Transferee) shall require Buyer's consent.

(c) Buyer's Limited Assignment Right. Buyer may assign the right to receive all or a portion of the Product that would otherwise be delivered to Buyer hereunder. In connection with any such assignment, Buyer and Seller agree to execute an assignment agreement substantially in the form attached hereto as Exhibit G. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so, and (ii) any damages associated with such assignee's failure to receive any such Product.

18.4 Governing Law and Venue.

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 Law. 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. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Northern District of California or the Superior Court of California, County of Santa Clara, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Northern District of California or the Superior Court of California, County of Santa Clara, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

18.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit H. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

18.6 Mobile-Sierra.

Absent the agreement of all 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 below is unenforceable or ineffective as to such 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain 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 any rate or other material economic terms and conditions agreed to by the Parties.

18.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) and the Bridge Addendum constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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 as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights

shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

18.8 Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Product delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

18.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

18.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 18.10) (a "Dispute"), any Party (the "Notifying Party") may deliver to the other Parties (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 18.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

18.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

18.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer 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 and is a public entity separate from its members. Buyer shall solely be responsible for

all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

18.13 Dodd-Frank Act

The Parties intend this Agreement 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).

18.14 Market-Based Rate Authority.

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this Agreement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

18.15 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 Article, 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 shall mean 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;
- (g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

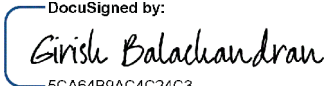
Baldy Mesa Solar, LLCBy: Kleber CostaName: Kleber CostaTitle: Authorized Representative**Silicon Valley Clean Energy, a California
joint powers authority**By:  5CA64B9AC4C24C3...Name: Girish BalachandranTitle: CEO

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

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 [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Resource Adequacy 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 [XXXXXX] 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, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

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 documents presented under and in compliance with the terms of this Letter of Credit 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 ninety (90) days prior to any such Expiration Date we have sent to you written notice by registered mail or 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.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], 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 Resource Adequacy Agreement dated as of _____, (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) 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 we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and 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 [Buyer], 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 [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to [Buyer], a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“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 that the Construction Start (as defined in 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.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the day of _____.

[Seller]

By: _____

Its: _____

Date: _____

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by [Seller] (“Seller”) to [Buyer], a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“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]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than ninety-seven percent (97%) of the Guaranteed Capacity.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than ninety-seven percent (97%) of the Guaranteed Capacity and receiving instructions to charge, store and discharge energy.
- d) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, Southern California Edison on ____ [DATE] ____.

SELLER:

Signature: _____
Name: _____
Title: _____
Date: _____

ENGINEER

Signature: _____
Name: _____
Title: _____
Date: _____

EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: Baldy Mesa Solar

Resource type: Lithium-Ion Battery Energy Storage System

Nameplate capacity: 75MW

[REDACTED]

Location: San Bernardino County, CA

Unit physical address: 19252 Muskrat Ave, Adelanto, California 92301

Unit elevation: 2888 ft

Unit latitude: 34.5759

Unit longitude: -117.4134

Interconnection voltage: 115kV

CAISO transmission access charge area: SCE

Point of interconnection: 115kV bus at SCE Roadway Substation

Point of interconnection address: 34.5759,-117.413376

Existing zone: SP-15

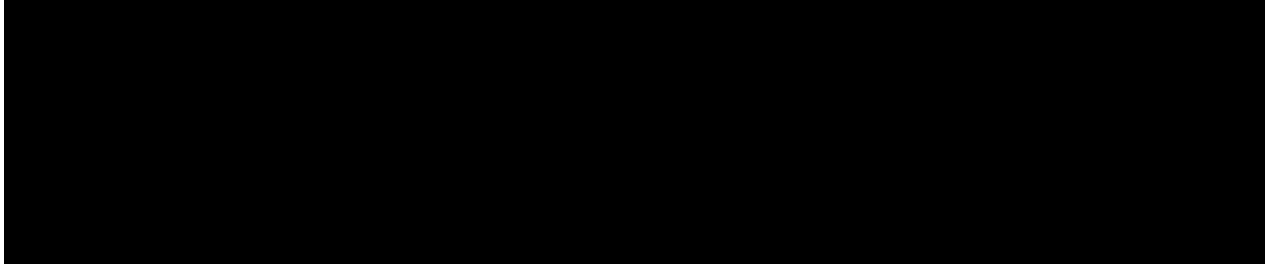
[REDACTED]

CAISO Resource ID: TBD

Substation: SCE Roadway Substation

EXHIBIT E: OPERATIONAL CHARACTERISTICS

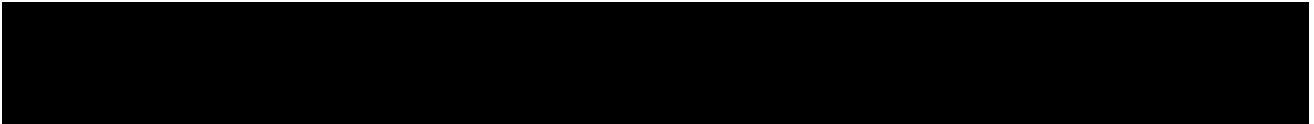
Throughout the Delivery Term, the Unit shall maintain or exceed the following minimum performance. The amounts set forth below reflect the full Unit.



Definitions

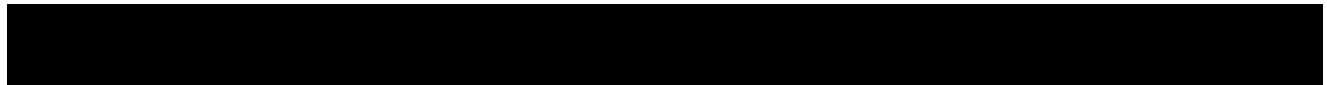
“Round-Trip Efficiency” means the rate calculated by dividing energy discharged from the Unit by energy charged to the Unit.

“Annual Availability” means the total number of hours, or partial hours, in the Contract Year during which the Unit was available to charge and discharge energy between the Unit and the Delivery Point.



Description of the Facility

Baldy Mesa Solar is a project comprised of the 75 MW, 300 MWh BESS Unit, paired with a solar facility with an expected nameplate capacity of 150 MW (“Facility”).



In furtherance of Buyer’s compliance and reporting obligations related to the Product, and without limiting Seller’s obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations (subject to redaction of commercially sensitive information).

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail to document construction and interconnection progress.
12. Compliance with workforce and prevailing wage requirements.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT G: FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [____], 2022 by and among [____], a [____] (“**Seller**”), [CCA], a [____] (“**Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain Resource Adequacy Agreement (the “**RAA**”) between Buyer and Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, Seller, Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of Buyer under the RAA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of Buyer under the RAA are expressly reserved for Buyer.
- (b) Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of Buyer under the RAA are expressly retained by Buyer. To the extent J. Aron fails to pay for any Assigned Products by the due date for payment set forth in the RAA, Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the RAA) of receiving notice of such non-payment from Seller.
- (c) J. Aron hereby accepts and Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the RAA shall take place between Buyer and Seller pursuant to the terms of the RAA; provided that (i) title to Assigned Product will pass from Seller to J. Aron upon delivery by Seller of Assigned Product in accordance with the RAA; (ii) Buyer is hereby authorized by J. Aron to and shall act as J. Aron’s agent with regard to scheduling Assigned Product; (iii) Buyer will provide copies to J. Aron of any Notice (as defined in the RAA) of an Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to Seller and promptly after receipt thereof from Seller; (iv) Seller will provide copies to J. Aron of annual forecasts and monthly forecasts of Available Capacity provided pursuant to Section [____] of the RAA; (v) Seller will provide copies to J. Aron of all invoices and supporting data provided to Buyer pursuant to Section [____], provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section [____], will be resolved solely between Buyer and Seller and therefore Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (vi) Buyer and Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.
- (e) Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from Seller through one or more intermediaries such that all Assigned Products will be re-delivered to Buyer, and (ii) J. Aron has the right to purchase receivables due from Buyer for any such Assigned Products. To the extent J. Aron purchases any such receivables due from Buyer, J. Aron may transfer such receivables to Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

- (f) Notwithstanding any other provision of this Agreement, Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where Buyer is acting as Scheduling Coordinator for the Unit (as defined in the RAA) and through scheduling of ISTs. As used in this clause (f), the following terms have the meanings specified below.

“**CAISO**” means California Independent System Operator or its successor.

“**CAISO Tariff**” means CAISO’s Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Scheduling Coordinator**” 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.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
- (1) delivery of a written notice of termination by either J. Aron or Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by Seller to each of J. Aron and Buyer following J. Aron’s failure to pay when due any amounts owed to Seller in respect of any Delivered Product Payment Obligation and such failure continues for one business day following receipt by J. Aron of written notice thereof;
 - (3) delivery of a written notice by Seller if any of the events described in Section [___] [Bankruptcy] of the RAA occurs with respect to J. Aron; or
 - (4) delivery of a written notice by J. Aron if any of the events described in Section [___] [Bankruptcy] of the RAA occurs with respect to Seller.
- (b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the RAA. All Assigned Rights and Obligations shall revert from J. Aron to Buyer upon the expiration of or early termination of the RAA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The Seller and the Buyer represent and warrant to J. Aron that (a) the RAA is in full force and effect; (b) 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 RAA or suspend performance thereunder; and (c) all of its obligations under the RAA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [] and the Cover Sheet of the RAA and to the addresses of each of Seller and Buyer specified in the RAA. Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by Seller to Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:



5. Miscellaneous. Sections [] (Buyer's Representations and Warranties), [] (Confidential Information), Sections [] (Severability), [] (Counterparts), [] (Amendments), [] (No Agency), [] (Mobile-Sierra), [] (Counterparts), [] (Facsimile or Electronic Delivery), Section [] (Binding Effect) and [] (No Recourse to Members of Buyer) of the RAA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. U.S. Resolution Stay Provisions. 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 for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) each of Buyer and Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

7. Governing Law, Jurisdiction.

(a) Governing Law.

THIS ASSIGNMENT AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS ASSIGNMENT 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 THE BUYER TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS ASSIGNMENT AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) [Reserved].¹

(c) Waiver of Right to Trial by Jury.

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS NOVATION AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF EITHER OF THE OTHER PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND EACH OF THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS ASSIGNMENT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(C).

¹ NOTE: Parties to negotiate and agree upon jurisdiction provision, if any, at the time of execution.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[SELLER]

a [_____]

By: _____

Name: _____

Title: _____

[BUYER]

a [_____]

By: _____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By: _____

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: _____

Name:

Title:

Appendix 1

Assigned Rights and Obligations

RAA: “RAA” means that certain Resource Adequacy Agreement dated [____], by and between [Buyer], a [____], and [____], a [____], as amended from time to time.

“**Assignment Period**” means the period beginning on [_____] and extending until [_____] provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the RAA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Products” include [____].

Further Information: All Assigned Product delivered by Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

EXHIBIT H: NOTICES²

BALDY MESA SOLAR, LLC (“Seller”)	Silicon Valley Clean Energy, a California joint powers authority (“Buyer”)

² SVCE to provide.

**MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY (“PARTY A”)
AND
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25th, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: Party A

Seller: Party B

Product: The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: January 1, 2023 through May 31, 2023, inclusive, and November 1, 2023 through November 30, 2023, inclusive.

Contract Quantity and Contract Price: The Contract Quantity and Contract Price for each day of each Showing Month during the Delivery Period shall be set forth in Appendix B.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Firm RA Product

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

2.2 **Seller To Identify Shown Unit**

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:
 - (i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
 - (ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c) Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.3 **Seller To Provide Alternate Capacity**

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics

specified in Appendix B no later than five (5) calendar days before the relevant deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of a Shown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

- (c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
 - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
 - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
 - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

2.5 **Damages for Failure to Provide Capacity**

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer's Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

2.6 **Indemnities for Failure to Deliver Contract Quantity**

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
 - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
 - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

2.7 **Buyer's Re-Sale of Product**

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the Competitive Solicitation Process. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights

under this Confirmation. If Buyer incurs any liability to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

- (b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

ARTICLE 3 **PAYMENT**

3.1 Monthly Payment

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

$$\text{Monthly Payment} = Q \times P \times CF$$

where:

- Q = The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month
- P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B
- CF = The conversion factor equal to 1,000 kW per MW

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.

3.2 **Allocation of Other Payments and Costs**

- (a) Seller is entitled to retain any revenues it may receive from, and shall 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 revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

- (b) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.
- (d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

ARTICLE 4

CAISO OFFER REQUIREMENTS

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or

operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

ARTICLE 5

OTHER BUYER AND SELLER COVENANTS

5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations.

5.2 Representations, Warranties and Covenants

- (a)** Seller represents and warrants to Buyer throughout the Delivery Period that:
 - (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
 - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iii) each Unit's Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;
 - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and
 - (v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.
- (b)** Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;

- (c) Seller covenants as follows:
- (i) Seller shall not offer, and shall ensure that the Unit's Scheduling Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit's Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit's Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and
 - (ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct
- (d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.

5.3 **Counterparts**

This Confirmation 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. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any other counterpart so delivered shall have the same legal effect as an original.

ARTICLE 6

CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.

ARTICLE 7

HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller's failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

ARTICLE 8

COLLATERAL REQUIREMENTS

8.1 Party A Collateral Requirements

- (a) Notwithstanding anything to the contrary contained in the Master Agreement, Party A shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Party B a Fixed Independent Amount as long as Party A or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody's. The "Fixed Independent Amount" shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled "Party B Credit Protection", and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Party A shall be added to the Exposure Amount for Party B and subtracted from the Exposure Amount for Party A.
- (b) If the conditions in subsections (i) and (ii) of this Section 8.1(b) are satisfied throughout the Delivery Period, then this Confirmation's Fixed Independent Amount shall not apply for that time period during which all such conditions are satisfied:

- (i) Party A's customers are PG&E's distribution or transmission customers and PG&E is the billing agent for those customers; and
 - (ii) PG&E is the provider of last resort pursuant to Cal. Pub. Util. Code Section 451 et seq. and applicable law for Party A's retail electric customers.
- (c) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and Party B has provided Party A with written notice of such failure to satisfy (Condition Notice), then Party A shall comply with the credit requirements of Section 8.1(a), above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.

8.2 Party B Collateral Requirements

Section 8.1 of the Master Agreement, entitled "Party A Credit Protection", and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation.

8.3 Current Mark-to-Market Value

For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current 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 the 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 Current Mark-to-Market Value for this Transaction, consequently affecting each Party's Exposure.

ARTICLE 9

ADDITIONAL MASTER AGREEMENT AMENDMENTS

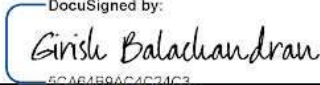
9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 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 the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable 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 this 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 shall promptly remit to Seller the excess amount. 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.”

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**Silicon Valley Clean Energy Authority, a
California joint powers authority****Pacific Gas and Electric Company, a
California corporation, limited for all
purposes hereunder to its Electric
Procurement and Electric Fuels Functions**

By:		By:	
Name:	<u>Girish Balachandran</u>	Name:	<u>Beverly Chan</u>
Title:	<u>CEO</u>	Title:	<u>Senior Portfolio Management Analyst, Energy Transactions</u>
Date:	<u>10/25/2022</u>	Date:	<u>10/25/2022</u>

APPENDIX A **DEFINED TERMS**

For purposes of this Confirmation, the following terms have the following meanings:

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing substantially the same functions.

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and 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, 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 or Marketable Emission Trading Credits (including 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 the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“FERC” means the Federal Energy Regulatory Commission.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

“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. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

“Hold-Back Capacity” is defined in Article 7 of this Confirmation.

“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. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“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.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.

“System RAR” means the system 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.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

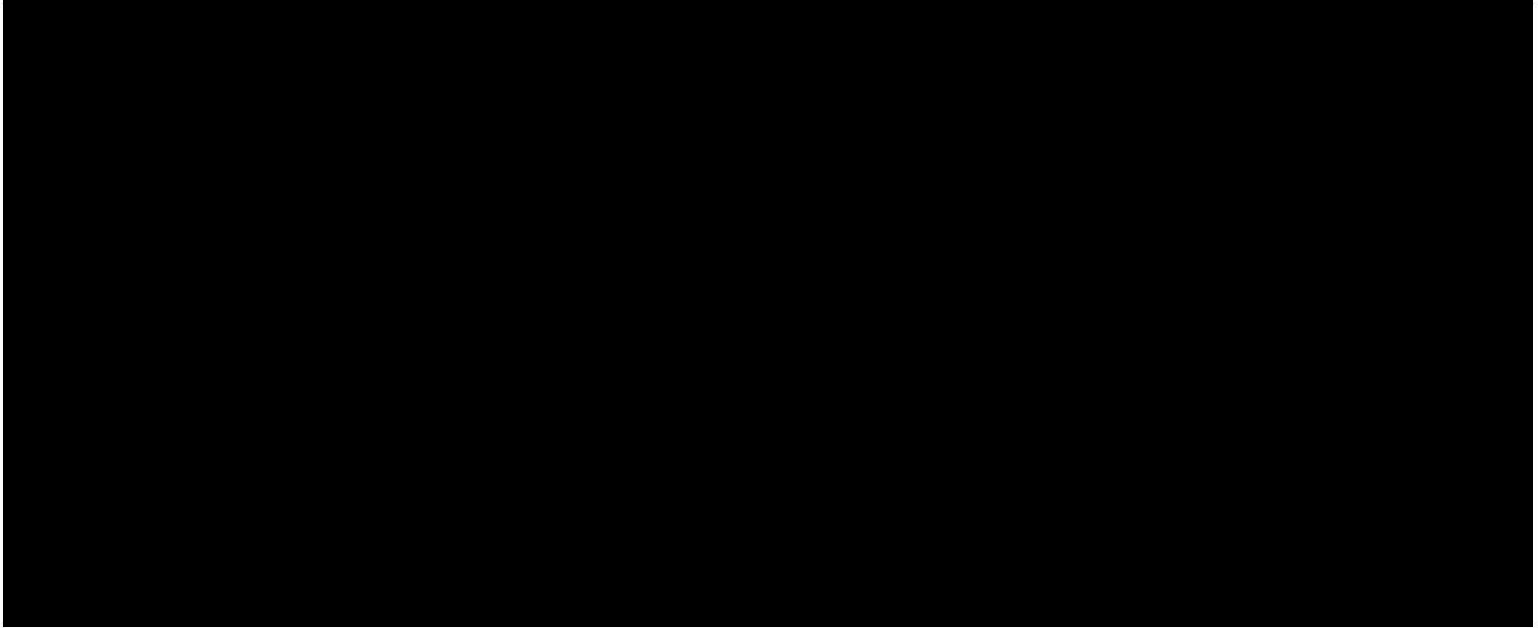
“Unit” means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.



* Please specify: System, Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura, or PG&E Other. PG&E Other means capacity coming from any combination of resources in the Humboldt, Sierra, Stockton, Fresno, Kern, and/or North Coast/North Bay Local Areas.

APPENDIX C
SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Benefitting LSE SCID:	
Generic Volume (in MW):	
Local Volume (in MW and by local area):	
Flexible Volume (in MW):	
Term:	

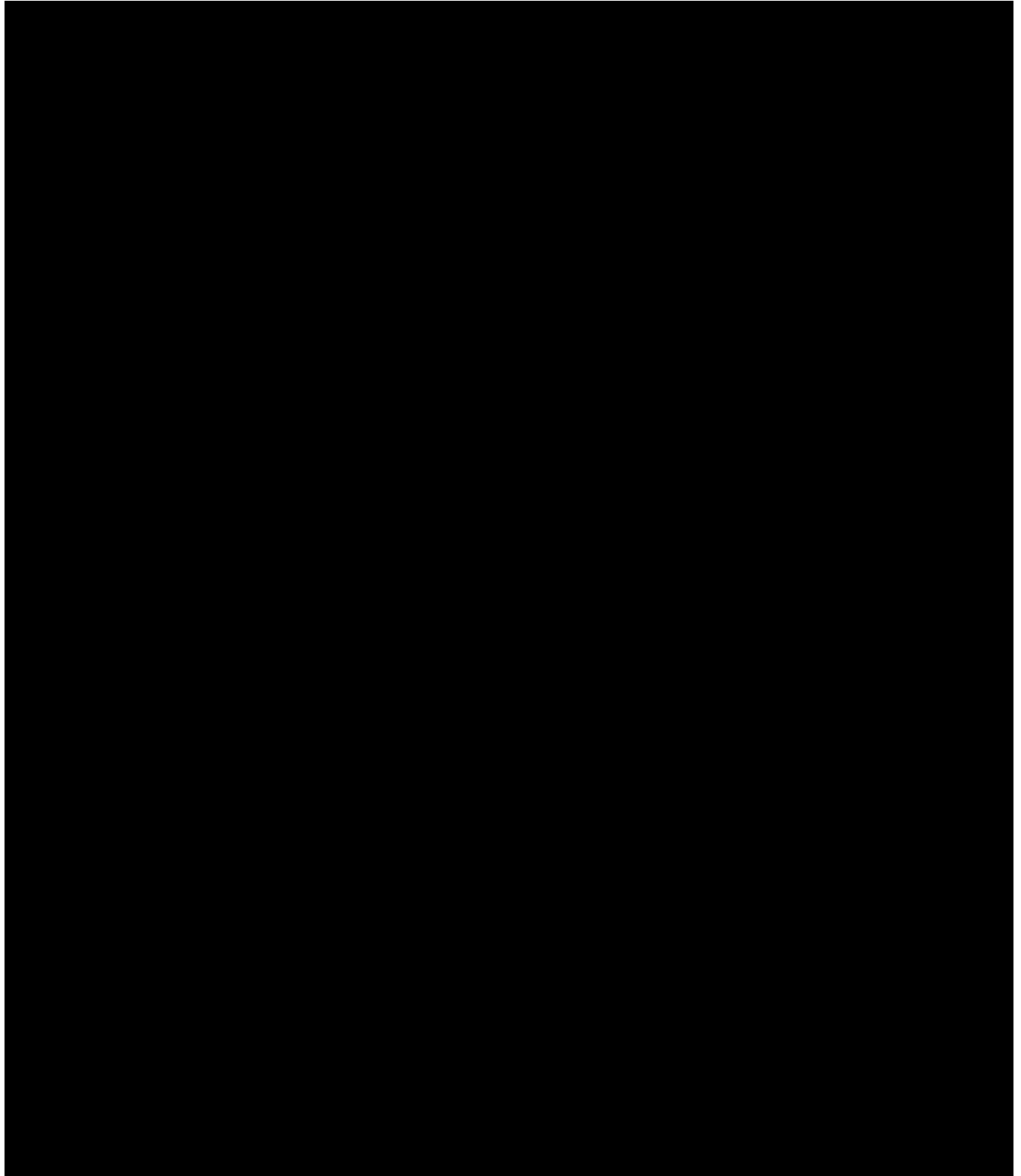
APPENDIX D
NOTICE INFORMATION

Name: Silicon Valley Clean Energy Authority, a
California joint powers authority

Name: Pacific Gas and Electric Company, a California
corporation, limited for all purposes hereunder to its Electric
Procurement and Electric Fuels Functions

("Party A")
All Notices:

("Party B")
All Notices:





APPENDIX E
FORM OF LETTER OF CREDIT
Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [Insert issue date]

Beneficiary: [Insert Beneficiary name]
 [Insert Beneficiary address]

Applicant: [Insert Applicant name]
 [Insert Applicant address]

Letter of Credit Amount: [Insert amount]

Expiry Date: [Insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the “Draft Amount”) is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary’s counterparty under the RA Confirmation]** (“Counterparty”) under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**,” or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to **[Insert fax number, email or other electronic transmission]**, Attention: **[Insert name of bank's receiving department]** or **[Insert e-mail or other electronic transmission address]**. If a demand is made by facsimile, e-mail or other electronic transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at **[Insert phone number(s)]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[INSERT NAME OF ISSUING BANK]

By: _____

Name: **[Print or type name]**

Title: **[Print or type title]**

EXHIBIT A
SIGHT DRAFT

TO:
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S. \$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO.
[XXXXXX].

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER:

By: _____
Name: [Print or type name]
Title: [Print or type title]