Community Advisory Committee Meeting
Monday, July 19, 2021
6:00pm
https://us02web.zoom.us/j/84794506189
Or join by phone:
Dial(for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or 877 853 5257 (Toll Free)
Webinar ID: 847 9450 6189

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 906-0491 or cob@ebce.org.

If you have anything that you wish to be distributed to the Committee, please email it to the clerk by 5:00 pm the day prior to the meeting.

C1. Welcome & Roll Call

C2. Public Comment
This item is reserved for persons wishing to address the Committee on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Committee are customarily limited to three minutes per speaker and must complete an electronic speaker slip. The Committee Chair may increase or decrease the time allotted to each speaker.

C3. Approval of Minutes from June 14, 2021 (5 minutes)

C4. CAC Chair Report (15 minutes)

C5. Power Resources RFO Contract (20 minutes, CAC Action Item)
Staff will provide the CAC with information on contracts coming from EBCE's 2020 Long-Term Resource Request for Offers (RFO). This is an action item and the CAC will provide comments back to the board regarding the contracts.

C6. Treasurer's Report (20 minutes, CAC Informational Item)
This is a consent item for the board that Staff will present to the CAC to help new members begin to understand the financial outlook of EBCE.

C7. Prepay Transaction Review (30 minutes, CAC Informational Item)
Staff will present highlights of the 30-year energy prepay transaction with Morgan Stanley so the CAC is aware of this financial arrangement.

C8. CAC Member and Staff Announcements including requests to place items on future CAC agendas

C9. Adjournment to Monday, September 20, 2021

Draft Minutes

Community Advisory Committee Meeting

Monday, June 14, 2021

6:00pm

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If you have anything that you wish to be distributed to the Committee, please email it to the clerk by 5:00 pm the day prior to the meeting.

C1. Welcome & Roll Call

Present: Members: Hu, Laundry, Liu, Padilla, Swaminathan, Talreja, Pacheco, Muetzenberg, Vice-Chair Franch and Chair Sutter

Excused: Member Eldred

Note: Member Hu served as an alternate for Member Eldred.

C2. Oath of Office for New CAC Members

Member Hu

C3. Public Comment

This item is reserved for persons wishing to address the Committee on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish

to address the Committee are customarily limited to three minutes per speaker and must complete an electronic speaker slip. The Committee Chair may increase or decrease the time allotted to each speaker.

Aleta Dupree spoke in support for building electrification, solar + storage and time of use policies. Aleta Dupree also spoke in support of EBCE becoming a municipal utility district in order to control transmission and distribution. Aleta spoke in support for the CCAs and for equitable investment in electric vehicle charging stations that are freely available to the public.

C4. Approval of Minutes from May 17, 2021 (5 minutes)

Member Padilla motioned to approve the minutes. Member Liu seconded the motion which passed 7/0. Abstain: Members Swaminathan, Talreja and Pacheco.

C5. CAC Chair Report (15 minutes)

Chair Sutter provided guidelines for CAC virtual meeting procedure and instructions for how to find public meeting recordings. Chair Sutter also commended Member Padilla on her last day on the CAC.

C6. Legislative Update (20 minutes, Informational Item)

Staff will provide an update to the CAC on the legislative bill tracker and recommended bill positions. Note that this item will build on information in the report previously covered in Item 15 of the May 19, 2021 EBCE Board Meeting.

The Committee discussed

- Clarification of NEM policy

Audrey Ichinose spoke regarding the proactive steps that EBCE should take in response to the failure of AB 1139 to pass out of committee. Audrey Ichinose cautioned that PG&E will continue to attempt to undermine rooftop solar, and that EBCE should try to reform PUC 218, the paragraph that makes it difficult to aggregate behind the meter rooftop solar.

Jessica Tovar encouraged EBCE to support policies that protect and strengthen access to local solar solutions for the community. Jessica Tovar also stated that she expects that bills like AB 1139 will be introduced within the next year, which EBCE should prepare to oppose.

Vaughn asked about possible savings benefits that result from EBCE's NEM policies.

C7. EBCE Budget for PY 2021-2022 (45 minutes, Action Item)

Staff will describe the PY2021-2022 budget and CAC members can ask questions regarding budget items. The CAC will take action to advise the board.

The Committee discussed

- Questions about local call center budget, RPS and location
- Vehicle electrification funding sources
- Timeline for Vehicle to Building (V2B) solar and storage pilot
- Low or zero emissions zones
- Building electrification workforce development funding amount
- Energy efficiency funding allocation
- Funding sources for vehicle electrification program at the Port of Oakland
- Justification for 25% increase in operating budget
- Community Investment budget explanation
- Sponsorships and Events budgets
- Vehicle electrification fast charger installation cost
- Local call center funding
- Funding goals for current stage of Medium/Heavy Duty transportation electrification
- Long term costs for building electrification operations
- Relationship between Local Development and Procurement budgets
- Contingency budgets for greater than expected supply costs

Aleta Dupree spoke in support of the LDBP budget and for overbudgeting for the summer months to prepare for severe weather events.

Kate Duggin spoke in support of building public charging hubs for electric vehicles, and for the Connected Communities program to leverage housing services programs to assist AMP eligible customers to cover rent and mortgage payments.

Vaughn asked questions about hydrogen-hybrid vehicles

Audrey Ichinose spoke in support of using social equity metrics to develop a provisional assessment of the local development budget.

Jessica Tovar spoke in support of providing community innovation grants in addition to debt relief funds going forward.

Member Padilla motioned to approve the EBCE Budget for PY 2021-2022. Vice-Chair Franch seconded the motion which passed 8/0. Excused: Member Hu. Abstain: Members Talreja and Pacheco

C8. Possible EBCE Bill Relief Program (40 minutes, Informational Item)

CAC will discuss the possibility of proposing a new EBCE bill relief program. Potential sources of useful information is the report by *Environmental Justice Solutions* of the nine focus groups with predominantly customers of EBCE (here and also linked on the EBCE website under Connected Communities Focus Groups) to understand challenges faced by EBCE customers and help determine intervention strategies aimed at reducing debt and disconnections. Additionally, available programs to help with bills are located on the EBCE website under Energy Bill Assistance (here).

The Committee discussed

- Subsidy or forgiveness program to retain eligible customers in AMP program
- Possibility for across-the-board credit

Kate Dugan asked about utilizing local vs federal guidelines to assess eligibility for arrearage management programs.

Jessica Tovar stated that East Bay Clean Energy Alliance would hold a press conference event on June 15, 2021 to address the potential end of the moratorium at the end of the month. Jessica Tovar stated that details about the press conference are available at localcleanenergy.org.

C9. CAC Member and Staff Announcements including requests to place items on future CAC agendas

Member Landry thanked Member Padilla for her service and expertise on Member Padilla's last day.

C10. Adjournment to Monday, July 19, 2021

CAC Item C5
Staff Report Item 18

TO: East Bay Community Energy Board of Directors

FROM: Marie Fontenot, Senior Director of Power Resources

SUBJECT: Pattern, Terra-Gen, Clearway, and Intersect Contract Approvals (Action)

DATE: July 21, 2021

Recommendation

Adopt four Resolutions authorizing the Chief Executive Officer to execute agreements for four projects awarded short listing through the 2020 Renewable Energy and Storage request for offers: (RFO) Tecolote Wind LLC (Pattern), Edwards Sanborn Storage III, LLC, Daggett South 3, LLC (Clearway), and IP Oberon II, LLC (Intersect Power). The four renewable energy and battery storage projects listed below are expected to be operational starting in 2021 with the latest one starting operation in 2023. These projects will deliver renewable energy and Renewable Energy Credits (RECs) and Resource Adequacy (RA):

a. **Pattern Contract**: 10-year 100 mega-watts (MW) wind project in Torrance and Guadalupe counties, New Mexicodeveloped by Pattern;
b. **Terra-Gen Contract:** 12-year 47MW/188MWh lithium-ion battery storage project in Kern County, June 2022 online date with Edwards Sanborn Storage III, LLC, developed by Terra-Gen;
c. **Clearway Contract:** 15-year 50 MW solar project paired with a 12.5MW/50MWh battery, in San Bernadino County, expected to be operational in March 2023, developed by Clearway; and
d. **Intersect Contract:** 15-year Index-Plus PCC1 RECs and 10-year RA from 125MW paired with a 125 MW battery in Riverside County, expected to be operation in December 2023, developed by Intersect Power.

Background

The 2020 Renewable Energy and Storage RFO is East Bay Community Energy's (EBCE) second long-term contract solicitation and was launched in November 2020. The RFO was designed to solicit offers for projects totaling several hundred MWs of renewable energy and battery storage with preference for those located in California (CA) and

specifically in Alameda County. EBCE's objective was to drive investments in new renewable and energy storage projects in Alameda County and CA, while securing affordable resources to manage any future power price risk. EBCE received many responses to the RFO and through the process reviewed a variety of projects with low development risk and strong project characteristics including project value to EBCE customer's and project diversity. EBCE administered the RFO and completed robust analytics using internal tools and the cQuant valuation platform to calculate the Net Present Value of the submitted projects.

The agreements included in this memo are for projects where the resulting energy would be used to hedge EBCE against price fluctuation in the California Independent System Operator (CAISO) energy markets and contribute to procurement mandates issued by the California Public Utilities Commission (CPUC). One such mandate requires each CPUC-jurisdictional load serving entity to purchase RA capacity that would be delivering capacity and online in each year during 2021-2023; it is the "2021-2023 Electric Reliability Requirements"[1]. A second mandate requires additional RA online in each year during 2024-2026. That mandate is the "Decision Requirement Procurement to Address Mid-Term Reliability 2023-2026"[2], which is currently in draft form. To address this need, EBCE has selected projects that will provide RA and at the same time select projects that would provide low-cost renewable energy for EBCE customers and each of these are discussed below.

The Pattern Contract is for a project with 100 MW of wind renewable energy and based in Torrance and Guadalupe counties, New Mexico. The contract is for a 10-year term with generation expected to come online on December 31st, 2021. The project has an executed interconnection agreement, and the developers have site control for the location. The contracting entity under Pattern is Tecolote Wind, LLC. Pattern Energy is an experienced renewable energy developer with a current operating capacity of 4.4 giga-watts (GWs). Additionally, Pattern will invest into EBCE's Community Investment fund as part of this contract.

The Terra-Gen Contract is for a project with 47MW/188MWh battery storage project based in Kern County. It is a 12-year tolling contract settled using a capacity pricing structure and is expected to be operational in June 2022. Currently, there is a CAISO operational study that may delay the operational date to November 2022. If that occurs, Terra Gen will provide 2022 summer RA that would qualify for the 2021-2023 Electric Reliability Procurement Requirement. Terra-Gen is an experienced renewable energy and battery storage developer with over 1.3 GWs of capacity operational and has extensive experience working with CCAs, including EBCE (Edwards Solar II – 100 MW solar and virtual storage, approved by EBCE Board Sept. 2019). The contracting entity under Terra-Gen is Edwards Sanborn Storage III, LLC.

[1] https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF
[2] https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M385/K026/385026493.PDF

The Clearway Contract is for a project being developed by Clearway and is for 50 MWs of solar paired with a 12.5 MW/50 MWh battery. The contracted project, Daggett South, is part of a larger 482 MW project located in San Bernadino County, CA. The contract is for a 15-year term with the generation expected to come online on March 1st, 2023. Clearway is an experienced solar and storage project developer and has experience contracting with other CCAs including an executed contract with EBCE for the Rosamond solar project which came on-line earlier than the contracted operation date. The Daggett South project has executed an interconnection agreement, the developer has site control, and the project is fully permitted. Additionally, Clearway will invest into EBCE's Community Investment fund as part this contract.

The Intersect Contract is for Index Plus Portfolio Content Category 1 (PCC1) RECs and RA from a 125 MW solar paired with a 125 MW battery. The contracted project, Oberon, is located in Riverside County. The contract is for 15-years of RECs and 10-years for RA, under the same contract. The expected commercial operation date for this project is December 31st, 2023. Intersect is an experienced developed having developed, permitted, and contracted a portfolio of 1.7 GWs of large-scale solar projects across CA and Texas. The contracting entity for this project is IP Oberon II, LLC. EBCE has previously contracted with Intersect Power under an RA-only agreement from their Aramis project.

Conclusion

EBCE staff recommends authorizing the CEO to negotiate and execute the following: the 10-year Pattern Contract, the 12-year Terra-Gen Contract, the 15-year Clearway Contract, and the 15-year Intersect Contract. From these four projects EBCE customer will benefit from more renewable energy, energy that will continue to hedge EBCE's costs against energy market price variability, financial investment into local communities, and help EBCE satisfy its 2021-2023 Electric Reliability Requirements. EBCE will also continue to evaluate other projects for EBCE customer's benefit.

Attachments:

A. Resolution Authorizing the CEO to Negotiate and Execute the Tecolote Wind Renewable Power Purchase Agreement
B. Resolution Authorizing the CEO to Negotiate and Execute the Daggett South Renewable Power Purchase Agreement
C. Resolution Authorizing the CEO to Negotiate and Execute the Edwards Sanborn Storage III Energy Storage Agreement
D. Resolution Authorizing the CEO to Negotiate and Execute the IP Oberon Index Plus PCC1 REC and RA Agreement
E. Presentation
F. Proforma Energy Storage Agreement
G. Proforma Renewable Energy Power Purchase Agreement

H. Proforma Renewable Energy and Storage Power Purchase Agreement

RESOLUTION NO. R-2021-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE THE TECOLOTE WIND, LLC RENEWABLE POWER PURCHASE AGREEMENT

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHERAS, The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City, to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the joint powers agreement in March of 2020.

WHERAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHERAS, Tecolote Wind, LLC, proposed a 100MW wind energy project in Torrance and Guadalupe counties, New Mexico, developed by Pattern Energy; and

WHERAS, the project is expected to be operational by December 31st, 2021 for the term of ten years.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute a ten-year agreement with Tecolote Wind, LLC for a 100MW renewable energy project in Torrance and Guadalupe counties, New Mexico. The final agreement shall include the key terms outlined in the staff report associated with this Resolution.

ADOPTED AND APPROVED this 21 day of July, 2021.

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Dianne Martinez, Chair

ATTEST:

_____

Adrian Bankhead, Clerk of the Board

RESOLUTION NO. R-2021-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE THE DAGGETT SOUTH POWER 3, LLC RENEWABLE POWER PURCHASE AGREEMENT

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHERAS, The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the joint powers agreement in March of 2020.

WHERAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHERAS, Daggett South Power 3, LLC, proposed a 50 MW solar project paired with 12.5MW/50 MWh battery storage in San Bernadino County, developed by Clearway and

WHERAS, the project is expected to be by operational by March 1st, 2023 and will remain operational for the term of fifteen years

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute a fifteen-year agreement with Daggett South 3, LLC for a project with 50 MW solar paired with a 12.5 MW/50 MWh battery storage in San Bernadino County. The final agreement shall include the key terms outlined in the staff report associated with this Resolution.

ADOPTED AND APPROVED this 21 day of July, 2021.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

RESOLUTION NO. R-2021-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE THE EDWARDS SANBORN STORAGE III, LLC ENERGY STORAGE AGREEMENT

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHERAS, The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the joint powers agreement in March of 2020.

WHERAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHERAS, Edwards Sanborn Storage III, LLC, proposed a 47MW/188MWh battery energy storage project in Kern County, developed by Terra-Gen and

WHERAS, the project is expected to be operational by June 1, 2022 and will remain operational for a term of twelve years.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute a twelve-year agreement with Edwards Sanborn Storage III, LLC for a 47 MW/188MWh battery storage project in Kern County. The final agreement shall include the key terms outlined in the staff report associated with this resolution.

ADOPTED AND APPROVED this 21 day of July, 2021.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

RESOLUTION NO. R-2021-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE THE IP OBERON II, LLC INDEX PLUS PCC1 REC AND RA AGREEMENT

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHERAS, The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City, to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the joint powers agreement in March of 2020.

WHERAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHERAS, IP Oberon II, LLC, proposed a 125MW solar paired with a 125MW battery storage project in Riverside County, developed by Intersect Power; and

WHERAS, the project is expected to be operational by December 31, 2023, and will remain operational for a term of fifteen years.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute an agreement with IP Oberon II for a) a fifteen-year term for index plus PCC1 RECs and b) a ten-year term for RA, both from a 125MW solar paired with a 125MW battery storage project in Riverside County. The final agreement shall include the key terms outlined in the staff report associated with this Resolution.

ADOPTED AND APPROVED this 21 day of July, 2021.

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Dianne Martinez, Chair

ATTEST:

_____

Adrian Bankhead, Clerk of the Board

EAST BAY COMMUNITY ENERGY

2020 RPS & Storage Resource RFO - Project Approvals

PRESENTED BY: Marie Fontenot

DATE: July 9, 2021

Introduction

EBCE Staff is seeking Board approval to authorize the CEO to negotiate and execute the following four contracts: one RPS Power Purchase Agreement (PPA), one Energy Storage Agreements (ESA), one RPS PPA+ESA, and one indexed RPS contract with Resource Adequacy, submitted into EBCE's 2020 Renewable Energy & Storage Resource RFO

- RPS PPA: 10-year 100 MW wind farm based in New Mexico with Pattern Energy. Expected to be operational in December 2021.
- ESA: 12-year 47 MW/188 MWh battery storage project in Kern County with Terra-Gen. Expected to be operational in June 2022.
- RPS PPA+ESA: 15-year 50 MW solar and storage project with a 12.5MW/50MWh battery, in San Bernadino County, with Clearway. Expected to be operational in March 2023.
- Index RPS+RA: 15-year 125MW solar + 125 MW RA from battery storage project in Riverside County with Intersect Power. Expected to be operational in December 2023.

Solicitation Overview

Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable and clean energy sources
- Meet a significant percent of SB350 long-term contracting requirements, equal to 65% of RPS obligations
- Meet IRP Near- and Mid-Term Resource Adequacy Reliability Procurement mandates
- Create new renewable energy projects to deliver PCC1 RECs
- Contract low-cost energy hedges to complement existing portfolio

Project Characteristics

Facilities:

- Location: Projects may be within or outside of California. All energy must be deliverable to CAISO.
- Construction Status: Energy and related products may come from new or existing resources.

Capacity:

- Minimum Contract Capacity: 10 MW
- Maximum Contract Capacity: 200 MW

Delivery Date:

- Energy and RPS attribute delivery must be within calendar years 2021, 2022, 2023, or 2024, with a preference for projects that begin delivery earlier within this window.

Contract Duration:

- 5-20 year durations

Technology:

- Renewables, Storage, and Large Hydro

Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered
- Evaluated exhaustive combinations of projects to achieve desired volume targets, while optimizing project risk, location, workforce development, economics, and other characteristics
- Encouraged RFO participants to be creative and provide proposal variations on individual projects and include battery storage

EAST BAY COMMUNITY ENERGY

Participation

- Robust project offering with over 70 unique project sites and over 400 contract variations
- All 6 products that were solicited were offered
- Offers included solar, wind, geothermal, hydro, and storage
- Projects based in 6 different states, predominantly CA

EAST BAY COMMUNITY ENERGY

Evaluation Process

- **Evaluation Rubric scored 3 areas:**
  - Counterparty Execution, Offer Competitiveness, and Project Development Status
  - Multiple items under each area
- **Two reviewers were assigned to each project.**
- **Staff reviewed all submitted information and provided scores for all categories except for Term Sheet Markups and NPV.**
  - Each item has 10 point max. at its own weighting.
  - Term Sheet Markups were scored by one assigned reviewer.
  - NPV scores were directly incorporated into overall project score with a weighting of 45%.
    - The Net Present Value was calculated based on simulations on 3 different forward curves
    - For each forward curve we took a weighted average of the P5 (50%), P50 (25%), and P95 (25%) and then took a simple average across the 3 curves
    - We normalized this number on a $/MW basis and the projects were then assigned a 0-10 score based on the NPV distribution
- **Scoring and rubric were consistent with the selection process for the 2018 California Renewables RFP.**

EAST BAY COMMUNITY ENERGY

Pattern Project Details

- Selected via the 2020 Renewable Energy & Storage RFO
- 100MW wind project based in Torrance and Guadalupe counties, New Mexico
  - Total project size is 272 MW
- 10-year contract
- Expected Commercial Operation Date is Dec 31st, 2021
- Project has an executed interconnection agreement and site control.
- Pattern is investing into EBCE's Community Investment fund as part of this contract.
- Committed toward utilizing union labor and prevailing wages in New Mexico
- The contracting entity under Pattern is Tecolote Wind LLC.

Pattern Company Overview

- Pattern Energy is one of the world's largest privately-owned developers and operators of wind, solar, transmission, and energy storage projects.
- Founded in 2009, Pattern's operational portfolio includes 28 renewable energy facilities that use proven, best-in-class technology with an operating capacity of 4.4 GW in the United States, Canada and Japan.
- Pattern has a strong track record in CA and some experience with CCAs; Owns and operates at least 1 executed PPA contracted with CCAs:
  - Duran Mesa Wind, New Mexico with SVCE and CCCE (200 MW)
  - Grady Wind, New Mexico with SMUD (220 MW)
  - Hatchet Ridge Wind, Shasta County with PG&E (101 MW)
  - Ocotillo Wind, Imperial County with SDG&E (265 MW)

Terra-Gen Project Details

- Selected via the 2020 Renewable Energy & Storage RFO
- 47MW / 188MWh standalone battery storage project based in Kern County, neighboring Edwards Air Force Base
  - Project location near solar projects signed out of 2018 RFP, serves as a hedge
  - 47MW of RA and includes ability to extend duration in the future
- 12-year contract; Tolling structure; P-node settled project
- Expected Commercial Operation Date is June 2022
  - EBCE to receive 2022 summer RA: either from project if CAISO operational study results enable June 2022 COD, or from neighboring new build project if study results require November 2022 COD.
- Project has an executed interconnection agreement, site control, and is fully permitted under CEQA.
- Terra-Gen is investing into EBCE's first Community Investment fund as part of this contract
- Terra-Gen has already executed a Project Labor Agreement (PLA) utilizing union labor
- The contracting entity under Terra-Gen is Edwards Sanborn Storage III, LLC

Terra-Gen Company Overview

- Terra-Gen is an independent power producer focused on the development, construction and operation of power generation facilities utilizing clean energy resources such as wind, solar, geothermal and battery storage with over 1,300 MW in operations and construction and 3+ GW in development
- Terra-Gen was established in August 2007 and acquired by Energy Capital Partners (ECP) in September 2015
- Terra-Gen is comprised of a development business, an operations and maintenance (“O&M”) platform and an Operating Portfolio (~1 GW)
- Strong track records in CA and among CCAs, having at least 1 executed PPA with the following:
  - EBCE (Edwards Solar II – 100 MW solar and virtual storage, approved by EBCE Board Sept. 2019)
  - MCE
  - CPA
  - CPSF
  - SJCE
  - Pioneer

Clearway Project Details

- Selected via the 2020 Renewable Energy & Storage RFO
- 50 MW of Solar PV capacity
- 12.5 MW / 50 MWh of co-located battery storage
- The facility is part of the advanced stage Daggett facility which is 482 MW solar PV and storage complex located in San Bernardino County, CA of which portions are scheduled to come online in 2022
- 15-year contract term with the expected Commercial Operation Date March 1st, 2023
- Project has an executed interconnection agreement, site control, and is fully permitted under CEQA.
- Clearway is investing into EBCE's Community Investment fund as part of this contract and has signed a Letter of Intent to execute a five-trade PLA
- The contracting entity under Clearway is Daggett South Power 3, LLC

Clearway Company Overview

- Clearway Energy Group is a well-capitalized, privately-owned company with access to sufficient funds to complete development of the proposed projects
- With the corporate offices in San Francisco and Carlsbad, Clearway has approximately 150 employees based in California
- Clearway, with over a decade of experience in developing, financing, and operating renewable energy projects; and owns and operates a portfolio of 5 GWs of renewable energy assets across 26 states and owns a pipeline of over 10 GWs of wind, solar, and energy storage projects under development
- Strong track records in CA and some experience with CCAs, having at least 1 executed PPA with the following:
  - EBCE (Rosamond (online)– 112 MW solar, approved by EBCE Board Sept. 2019)
  - CPA

Intersect Project Details

- Selected via the 2020 Renewable Energy & Storage RFO
- 125 MW solar PV + 100MW battery storage project based in Desert Center, Riverside County
  - Total project size is 500 MW PV + storage across all off-takers
- 15-year contract for Index + PCC1 REC
- 10-year contract for RA
- Expected Commercial Operation Date is December 31, 2023
- Obtained Full Capacity Deliverability Status in April 2021
- Project has a total of 6,300 acres under site control with 3,500 being used for solar and battery installations.
- Contracting entity is IP Oberon II, LLC

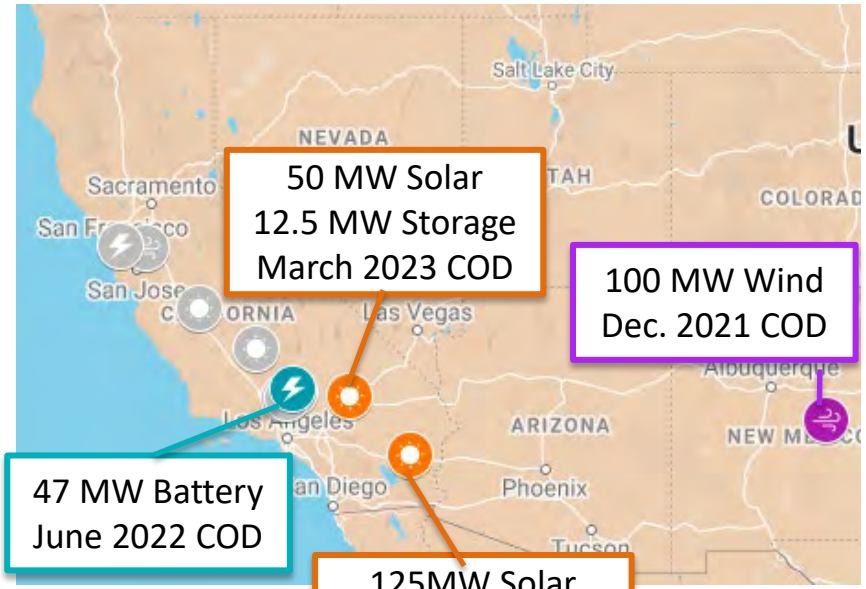
Intersect Company Overview

- Intersect Power is a clean infrastructure company bringing efficient, innovative, and scalable low-carbon solutions to its customers in energy and commodity markets.
  - Intersect Power and Softbank Energy are joint venture partners in Intersect Power Renewable Energy Holdings
- Intersect Power has successfully developed, permitted and contracted a 1.7GWp portfolio of 250 MWp + PV projects across California and Texas.
- Intersect Power is a company of 22 employees, 7 of which reside in Alameda County and majority in the greater San Francisco Bay Area.
- Intersect has a portfolio of solar PV projects across the country with utilities and merchants including:
  - East Bay Community Energy (Aramis Project – RA Only)
  - Austin Energy
  - Direct Energy
  - Lower Colorado River Authority

Portfolio Characteristics

- The final portfolio will include storage projects brought to Board in June
- Projects range from 47 to 125 MWs in nameplate capacity, all storage has 4 hour duration
- Project maturities range from early to late-stage development
- All three in-state projects are committed to utilizing union labor
- Final portfolio selection does account for project fall-out risk

Gray icons represent existing EBCE contracts.



EAST BAY COMMUNITY ENERGY

RPS Portfolio Summary

Contracted Portfolio:							
Developer	Technology	Nameplate MW	Storage MW	County	Actual or Expected COD	Term	Settlement
Clearway Energy Group	Solar	112	N/A	Kern	12/22/2020	15	DLAP
Salka Energy Group	Wind	57.5	N/A	Alameda	6/30/2021	20	Pnode
Idemitsu Solar	Solar	55.8	N/A	Tulare	12/31/2021	15	DLAP
EDP Renewables North America	Solar+Storage	100	30MW/120MWh	Fresno	12/31/2022	20	Pnode
sPower	Solar+Storage	125	80MW/160MWh	Kern	12/31/2022	20	Pnode
Terra-Gen	Solar+Virtual Storage	100	TBD	Kern	12/31/2022	15	Pnode

EAST BAY COMMUNITY ENERGY

Next Steps

- Complete negotiations of projects under consideration.
- Informational update to Board *following* execution of all contracts from the 2020 RPS & Storage Resource RFO.
- Assess projects as they hit key milestones and mature further.
- Update filing to CPUC on status of 2021-2023 Electric Reliability Requirements due August 2, 2021.
- CPUC's 2021 IRP cycle provides formal opportunity for portfolio review and analysis of open position, cost and risk. Further engagement with board and community in spring/summer timeframe.

CONFIDENTIAL
EBCE PRO FORMA
STANDALONE STORAGE AGREEMENT
28 APRIL 2021

ENERGY STORAGE AGREEMENT

COVER SHEET

Seller: [*Seller Name, e.g., Project Company LLC*] ("**Seller**")

Buyer: East Bay Community Energy Authority, a California joint powers authority ("**Buyer**")

Description of Facility: A [XX MW/XXX MWh] grid-connected battery energy storage facility, all located in _____ County, in the State of _____, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Documentation of Conditional Use Permit if required: [ ] CEQA, [ ] Cat Ex,[ ]Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

Delivery Term: [XX] Contract Years.

Guaranteed RA Amount: The Qualifying Capacity (QC) of the Facility, which is [XX] MW.

Storage Contract Capacity: [XX] MW for [two (2) hour] [four (4) hour] discharge

Guaranteed Efficiency and Availability:

Contract Year	Guaranteed Efficiency Rate	Guaranteed Storage Availability
1 – [XX]	88.0%	98.0%

Minimum Efficiency Rate: [Seventy percent (70%)]

Contract Price

The Storage Rate shall be:

Contract Year	Storage Rate
[1 – XX]	$X.XX/kW-mo. (flat) with no escalation

[If applicable per Seller bid]

The Tolling Rate shall be:

Contract Year	Tolling Rate
[1 – XX]	$X.XX/MWh (flat) with no escalation

Product:

- ☐ Generating Facility Energy
- ☐ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status and Expected FCDS Date:
- ☒ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security: $90/kW of Contract Capacity

Performance Security: $105/kW of Contract Capacity

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Exhibits:

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement ("**Agreement**") is entered into as of _____ (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.6.

"**Actual Monthly NQC**" means the amount of Net Qualifying Capacity able to be shown during a given month.

"**Actual Round-Trip Efficiency**" means the measured round-trip efficiency of the Facility, as a percentage, measured in accordance with Exhibit M.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Alternating Current**" or "**AC**" means alternating current.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Facility.

"**Availability Adjustment**" or "**AA**" has the meaning set forth in Exhibit N.

"**Available Energy**" has the meaning set forth in Exhibit N.

"**Available Energy Measured**" has the meaning set forth in Exhibit N.

"**Available Power**" has the meaning set forth in Exhibit N.

"**Available Power Measured**" has the meaning set forth in Exhibit N.

"**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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time (PPT) for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means East Bay Community Energy Authority, a California joint powers authority.

"**Buyer Default**" means an Event of Default of Buyer.

"**CAISO**" means the California Independent System Operator Corporation.

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can accept at or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**CEQA**" means the California Environmental Quality Act.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means the as-available Energy delivered to the Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy shall be used solely to charge the Facility.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

"**CIL Adjustment Factor**" has the meaning set forth in Section 3.5(c).

"**Claim**" has the meaning set forth in Section 16.2(a).

"**COD Certificate**" has the meaning set forth in Exhibit B.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"**Compliance Action**" has the meaning set forth in Section 3.6.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.6.

"**Compliance Showings**" means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Price**" has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Storage Rate[and, if applicable, the Tolling Rate].

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date."**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**CPUC System RA Penalty**" has the meaning set forth in the Resource Adequacy Rulings.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Cycle**" or "**Full Cycle Equivalent**" means a quantity of Discharging Energy (in MWh) equal to the Storage Contract Output.

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security.

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Delivery Point**" has the meaning set forth in Exhibit A.

"**Delivery Term**" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy

In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"**Electrical Losses**" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, losses of Energy within the Facility's energy storage equipment along with all transmission or transformation losses (a) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy and (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

"**Energy**" means alternating current electrical energy measured in MWh.

"**Energy In**" has the meaning set forth in Part II.B of Exhibit M.

"**Energy Management Software**" has the meaning set forth in in Exhibit A.

"**Energy Out**" has the meaning set forth in Part II.B of Exhibit M.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Excused Event Hours**" has the meaning set fort in Exhibit N.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Construction Start Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including the Energy Management Software and related storage and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes but is not limited to transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

"**Facility Energy**" means the Discharging Energy during any Settlement Interval or Settlement Period.

["**Facility Meter**" means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.]

"**FERC**" means the Federal Energy Regulatory Commission.

"**Financial Close**" means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

"**Flexible RAR**" means the flexible resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Full Cycle Equivalent**" means either (a) a Cycle or (b) the sum of more than one Partial Cycles that equal the Discharging Energy in one Cycle.

"**Future Environmental Attributes**" shall mean any and all generation attributes other than Standalone Energy Storage Incentives under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO; *provided, however*, that "Governmental Authority" shall not in any event include any Party.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Efficiency Rate**" means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet

"**Guaranteed RA Amount**" means the amount of Resource Adequacy Benefits (in MW) from the Facility as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.5.

"**Guarantor**" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars ($100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"**Guaranty**" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit J.

"**Hour**" has the meaning set forth in Exhibit N.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1.

"**Indemnified Party**" has the meaning set forth in Section 16.1.

"**Indemnifying Party**" has the meaning set forth in Section 16.1.

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Capacity**" means the maximum dependable operating capability of the Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit G hereto.

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

"**Interconnection Agreement**" means the interconnection agreement or agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Interim Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or 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, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank 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 substantially similar to the letter of credit set forth in Exhibit I.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**Local RAR**" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

"**Losses**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes, and Standalone Energy Storage Incentives.

"**Major Subcontractors**" means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of Ten Million Dollars ($10,000,000) for performance of any part of the work at the Site.

"**Maximum Charging Capacity**" has the meaning set forth in Exhibit A.

"**Maximum Discharging Capacity**" has the meaning set forth in Exhibit A.

"**Maximum Stored Energy Level**" has the meaning set forth in Exhibit O.

"**Meter Service Agreement**" has the meaning set forth in the CAISO Tariff."**Milestones**" means the development activities for significant permitting, interconnection, financing, and construction milestones set forth on the Cover Sheet.

"**Minimum Efficiency Rate**" means the percentage specified on the Cover Sheet.

"**Monthly Storage Availability**" has the meaning set forth in Exhibit N.

"**Moody's**" means Moody's Investors Service, Inc.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"**Net Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by electronic mail (e-mail).

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**NP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

"**Operating Procedures**" or "**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit O.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

"**Partial Cycle**" means a quantity of Discharging Energy (in MWh) that is less than one hundred percent (100%) of the Storage Contract Output.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**Planned Outage**" has the meaning set forth in Section 4.4(a).

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage or stand-alone storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**Qualified Energy**" has the meaning set forth in Part III.C of Exhibit M.

"**Qualified Power Capacity**" has the meaning set forth in Part III.B of Exhibit M.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.5(b).

"**RA Guarantee Date**" means the date that is sixty (60) days after Commercial Operation Date.

"**RA Shortfall Amount**" means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be

shown on Buyer's monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the Guaranteed RA Amount of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, or (c) the CAISO's reduction in the Net Qualifying Capacity of the Facility due to the Facility's actual Forced Facility Outage rate (i.e., past performance).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any month commencing after the RA Guarantee Date during which there is an RA Shortfall Amount.

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Receiving Party**" has the meaning set forth in Section 18.2.

"**Reduced MNQC**" has the meaning set forth in Section 3.5(c).

"**Remedial Action Plan**" has the meaning in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and, to the extent that Facility was eligible for Local RAR, located within NP 15 or Greater Bay Area Local Capacity Area Resource.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Capacity**" has the meaning set forth in the CAISO Tariff

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for Buyer pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 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, 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.

"**Round-Trip Efficiency Factor**" means (a) if the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, one hundred percent (100%), (b) if the Efficiency Rate is less than the Guaranteed Efficiency Rate but greater than or equal to the Minimum Efficiency Rate,

the Actual Round-Trip Efficiency, or (c) if the Efficiency Rate is less than the Minimum Efficiency Rate, zero percent (0%).

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.9.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit H to Buyer.

"**Site Control**" means that, for the Contract 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.

"**Standalone Energy Storage Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction or ownership from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Future Environmental Attribute.

"**Station Use**" means:

(a) any and all Energy that is used within the Facility to power electrical loads that are necessary for operation of the Facility, including information technology, telecommunications lights, motors, cooling and other thermal management equipment, control systems including battery management systems, and inverters; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Facility to discharge Energy that can be sustained for [two (2)][four (4)] consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to discharge Energy.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.6 and Exhibit M.

"**Storage Contract Capacity**" or "**Contract Capacity**" means the total capacity (in MW) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.6 and Exhibit M to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the product of the Storage Contract Capacity multiplied by [two (2)/four (4)] hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

"**Storage Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility

Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Storage Facility Metering Point**" means the location or locations of the Storage Facility Meter shown on Exhibit P.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Part II.I of Exhibit M.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Tolling Rate**" has the meaning set forth on the Cover Sheet.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means _____, a [State of organization] [Type of entity].

"**Uninstructed Imbalance Energy**" or "**UIE**" has the meaning set forth in the CAISO Tariff.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work 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) 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

(l) 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.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit F and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit G setting forth the Installed Capacity on the Commercial Operation Date;

(b) A [Participating Generator Agreement and/or a Participating Load Agreement] and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition; Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(e) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility or a Force Majeure Event.

3.2 **Ownership of Standalone Energy Storage Incentives**. Seller will own any Standalone Energy Storage Incentives, subject to a price reduction pursuant to Exhibit C.

3.3 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.3(a), and Sections 3.3(b) and 3.6, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.3(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.4 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.5 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

(c) Change in Law. Notwithstanding anything in this Agreement to the contrary, if, in any given month following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that the Facility is eligible to provide, thereby reducing the maximum achievable Net Qualifying Capacity of the Facility below the Guaranteed RA Amount (such new maximum achievable Net Qualifying Capacity, the "**Reduced MNQC**"), then the RA Shortfall Amount for such month shall be equal to the difference in the Guaranteed RA Amount and the product of the Actual Monthly NQC and the CIL Adjustment Factor. For the purposes of this subsection (c), the "**CIL Adjustment Factor**" means the Guaranteed RA Amount divided by the Reduced MNQC.

3.6 **Compliance Expenditure Cap**.

(a) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.3, 3.4(b) and (c) (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [twenty-five thousand dollars ($25,000.00)] per MW of Storage Contract Capacity in aggregate at over the Contract Term (the "**Compliance Expenditure Cap**").

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted**

Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.6 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with: (i) the acceptance of Charging Energy at the Delivery Point, (ii) the storage of Energy at the Facility, and (iii) the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (x) the delivery of Charging Energy to the Delivery Point and (y) the acceptance and transmission of Discharging Energy at and from the Delivery Point, including without limitation, transmission costs and transmission line losses and imbalance charges with regard to (x) and (y). The Facility Energy will be Scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss**. The risk of loss related to the Energy, including Charging Energy, Discharging Energy, and Energy stored in the battery, will pass and transfer from the Buyer to the Seller when Charging Energy is delivered to Seller at the Delivery Point and the risk of loss will pass and transfer back to the Buyer when the Facility Energy is delivered to Buyer at the Delivery Point. Title to all Energy delivered to Seller as Charging Energy shall remain with Buyer at all times.

4.3 **Charging Energy Management**.

(a) Generally. Buyer is solely responsible, at Buyer's sole cost, for procuring Charging Energy. Buyer is solely responsible, at Buyer's sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Delivery Point and to accept Discharging Energy at the Delivery Point. Except as expressly set forth in this Agreement, including Sections

4.3(c) and (e) and Section 4.6(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Facility. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.3(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Facility during the Contract Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Facility in violation of the first sentence of this Section 4.3(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) discharges the Facility other than as provided for in the Discharging Notice or (ii) discharges the Facility in violation of the first sentence of this Section 4.3, then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Pre-Commercial Operation Date Period; Coordination Regarding Commissioning and Storage Capacity Tests. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Facility. Seller is responsible to procure, at its own cost, any Energy required for commissioning purposes and to arrange to discharge such Energy into the grid. Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Facility testing for periods prior to the Commercial Operation Date. Both prior to and after the Commercial Operation Date, (i) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility commissioning and Storage Capacity Tests, and (ii) Seller shall reasonably coordinate and cooperate with Buyer with respect to Facility commissioning and Storage Capacity Tests so as to minimize direct and opportunity costs to the Buyer associated with such activities.

4.4 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between [June 1st and September 30th of any calendar year,] Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility (a "**Planned Outage**").

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.5 **Storage Availability and Efficiency**.

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-eight percent (98%) (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit N.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit N).

(c) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller's payment of liquidated damages made pursuant to Exhibit C.

4.6 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit M. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit M.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller, Seller shall (i) not be entitled to the payment for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, Buyer shall (x) procure the associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.7 **Interconnection Capacity**. Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity under the Interconnection Agreement throughout the Delivery Term. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

4.8 **Station Use**. Seller will be responsible for procuring and paying for all necessary retail electricity required to operate the Facility. Neither Charging Energy nor Discharging Energy may be used to provide Energy required for Station Use. Seller shall reimburse Buyer for any costs incurred by Buyer in connection with Station Use.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place

contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation batteries. Seller shall not (a) replace existing batteries in the Facility unless for critical maintenance purposes or (b) increase the capacity of the Facility without the prior consent of Buyer. Notwithstanding the aforementioned limitation under subclause (a), Seller may without Buyer's prior consent replace batteries in the Facility in order to maintain the Storage Contract Capacity, so long as (i) Seller provides Buyer one-hundred twenty (120) days' prior Notice, and (ii) such replacement does not increase the Storage Contract Capacity of the Facility.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit L of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating

Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Storage Contract Capacity.

ARTICLE 7
METERING

7.1 **Metering**.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit P, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Storage Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meter for the Facility, the Storage Facility Meter, (ii) the CAISO requires the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties is or becomes incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified

seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any), , and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit L.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies;

provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and N, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (x) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10)

Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit J. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit L or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**").

(d) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy storage capacity 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) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall

not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly 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. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.5 and (2) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.5) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to

exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not discharged by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days after the Guaranteed Construction Start Date;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any two consecutive Contract Years, the average Monthly Storage Availability over the two-year period is less than seventy percent (70%);

(vii) if, Seller fails to maintain an average Efficiency Rate of at least seventy percent (70%) over a rolling 12-month period;

(viii) if, Seller fails to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for more than three hundred sixty (360) days;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the

event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(x) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(xi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a

single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR

LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 4.5, 11.2, AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT N THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [Type of entity], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [***limited liability company][corporate***] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall 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**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable

provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development and Supplier Diversity**. Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q. In addition, Seller agrees to, or cause its contractors to, complete an annual supplier diversity and labor practices questionnaire provided by Buyer and, upon request of Buyer, to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

14.2 **Collateral Assignment**.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);;

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller**. Except as may be precluded by, or would cause the Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq,) or the regulations thereto, Cal. Government Code section 1090, Buyer's conflict of interest code/policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, (a) an Affiliate of Seller or (b) as part of a portfolio financing or portfolio sale of projects provided that sale is made to a Permitted Transferee and such sale is made of projects must have a combined capacity of at least 400 MW and in either case, Seller's Ultimate Parent or Affiliate must remain the operator of the Project. Seller shall provide Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment.

14.4 **Permitted Assignment by Buyer**. Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment upon not less than thirty (30) days' notice by delivering a written request for such assignment in the form attached to this Agreement. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 **[Purchase Option**. Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties), and in either case, at Seller's sole cost) of the Facility (the "**Purchase Option**"). The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term.

14.6 **Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity**.

(a) For the duration of the Delivery Term, Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**")). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "**ROFR Offer**"), for Buyer to accept, subject only to finalization and execution of an energy storage agreement for the Expansion Project (the "**Project ESA**") incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "**Material Terms**").

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project ESA for the Expansion Project with a third party (the "**Third-Party Transaction**"); provided, that if such Third-Party Transaction is not consummated within twelve months of the date of the ROFR Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the Right of First Refusal on the terms and conditions of this Section 14.6.

Additional Project Duration. Seller agrees Buyer shall have right to add duration to the Facility. Upon request of Buyer, Seller shall provide a written proposal to Buyer to add new

storage technologies to the Facility, at a price not to exceed the lesser of (i) current market prices or (ii) Seller's direct cost to add such capacity, plus ten percent (10%).][1]

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of 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. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remediates available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees (collectively, "**Indemnifiable Losses**") arising out of or relating to or in any way connected with: the Indemnifying Party's or its Affiliates' negligence, willful misconduct or breach of the Agreement.

(b) In those circumstances in which Seller acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify, and hold harmless the Indemnified Party against Indemnifiable Losses arising out of or relating to or in any way connected with the Indemnifying

1 NTD: Buyer and Seller to discuss.

Party's or its Affiliates' (i) ownership, development, construction, operation or maintenance of the Facility, including the Site(s); (ii) breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility or Site; or (iii) delivery of Energy up to and at the Delivery Point.

(c) In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer's receipt of Energy after the Delivery Point.

16.2 **Claim Notice**.

(a) **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**." A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

16.3 **Defense of Claims**. If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying

Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Amounts Owed**. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.5 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (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 Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). 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.

(b) Employer's Liability Insurance. Employers' liability insurance shall not be less than One Million Dollars ($1,000,000.00) 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.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. 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.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law,

(b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies**. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

18.6 **Information and Shared Learning**. Seller understands that Buyer is entering into the Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer's portfolio of assets to meet its customers' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity.

Throughout the Contract Term upon Buyer's request, and annually in a written report, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data but excluding cost or similar proprietary information, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller.

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

19.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any

other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.1 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.2 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.3 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.4 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.5 **Further Assurances**. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other

actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[SELLER]

By: _____
Name: _____
Title: _____

EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs:

County:

CEQA Lead Agency:

Type of Storage Facility:

Energy Management Software: Remotely operable, 2-4 second timestamps, historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and Buyer's SC, and provides the following Applications/Modes: Frequency Response and Dynamic Voltage Support – for the Facility; Shifting; Regulation; Flexible Ramp; and Spinning Reserve.

Operating Characteristics of Storage Facility: +0.95/-0.95 at Installed Capacity at Delivery Point; set point control +0.90/-0.90.

Operating Restrictions of Storage Facility: See Exhibit O.

Storage Contract Capacity:

Maximum Output:

Maximum Charging Capacity:

Maximum Discharging Capacity:

Delivery Point: PNode

Facility Meter: See Exhibit P.

Storage Facility Meter Location: See Exhibit P.

PNode: [If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Facility commissioning Energy hereunder to reflect the PNode corresponding to the Facility's point of interconnection with the CAISO Grid.]

Participating Transmission Owner:

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start**.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, 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 Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) 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 H hereto, and the date certified therein shall be the "**Construction Start Date**." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when 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 F (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial

Operation has been achieved. The "**Commercial Operation Date**" shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) if Seller provides Buyer at least ninety (90) days' advance Notice that the Facility will achieve Commercial Operation sooner than the Expected Commercial Operation Date, the date on which Commercial Operation is achieved; provided, that such earlier date of Commercial Operation shall not, absent Buyer's express written consent, occur earlier than one hundred twenty (120) days before the Expected Commercial Operation Date.

a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis due to a Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the "**Development Cure Period**"). Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period for a Force Majeure Event if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3.

5. **Failure to Reach Storage Contract Capacity**.

a. *Storage Contract Capacity*. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G hereto specifying the new Installed Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Storage Contract Capacity exceeds the Installed Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Storage Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month, as adjusted for the Storage Capacity Test, *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit N). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

[Alternate Storage Rate Provision if Storage Rate is based on 200 Cycles per year.]

(b) Storage Rate and Tolling Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit N). In addition (and if applicable), if Buyer dispatches the Facility for more than 200 Cycles, Seller shall receive an additional payment equal to the Tolling Rate *multiplied by* the MWh of Discharging Energy associated with the excess Cycles *multiplied by* the Round-Trip Efficiency Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the simple average of the Day-Ahead Market price for all the hours of the applicable month, as published by the CAISO, for the Delivery Point, provided, that if the foregoing calculation results in a negative value, then Seller shall pay Buyer the absolute value of such result, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(d) Standalone Energy Storage Incentives. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Standalone Energy Storage Incentives, or if any Standalone Energy Storage Incentives expire, are repealed, or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Standalone Energy Storage Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Standalone Energy Storage Incentives or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Standalone Energy Storage Incentives during the Contract Term. Notwithstanding the foregoing, if after the Effective Date of the Agreement, any Standalone Energy Storage Incentive is enacted for standalone energy storage projects, Seller

shall use commercially reasonable efforts to cause such credit to be available for the Facility. Seller shall share with Buyer the value of any credit received by Seller, as follows: Contract Price reduction, per 1%: $[per bid] per MW-mo/MWh (reduction can be applied to Storage Rate, Tolling Rate, if applicable, or both, if applicable).

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with Uninstructed Imbalance Energy and delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to

the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are likely to potentially affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. [Prevailing wage reports as required by Law.]

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority **(**"**Buyer**"**)** in accordance with the terms of that certain Energy Storage 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*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.

5. The Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Energy Supply Bids into the CAISO Day-Ahead Market and Real-Time Market in respect to the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT G

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage 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.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for [two (2)][four (4)] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.6 and Exhibit M (the "**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [*SELLER ENTITY*] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage 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 the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612

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 East Bay Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Energy Storage Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1999 Harrison Street, Suite 800, Oakland, CA 94612. 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]

(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 East Bay Community Energy Authority, a California joint powers authority, 1999 Harrison Street, Suite 800, Oakland, CA 94612, 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 Energy Storage Agreement dated as of _____, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of East Bay Community Energy 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 East Bay Community Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

FORM OF GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [_____] (the "**Effective Date**") by and between [_____], a [_____] ("**Guarantor**"), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

Recitals

A. Buyer and [*SELLER* ENTITY], a _____ ("**Seller**"), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the "**ESA**") dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the ESA, as required by Section 8.8 of the ESA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the "**Guaranteed Amount**"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars ($_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure

(the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the ESA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company][corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at	[____] Attn: [____] Fax: [____]
If delivered to Guarantor, to it at	[____] Attn: [____] Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly

as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*Signature on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT L

NOTICES

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: powernotices@ebce.org
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
Invoices: Attn: Phone: Email:	**Invoices:** Attn: Power Resources Phone: (510) 827-2051 Email: ap@ebce.org; powersettlements@ebce.org
Scheduling: Attn: Phone: Email:	**Scheduling:** Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: powerscheduling@ebce.org
Confirmations: Attn: Phone: Email:	**Confirmations:** Attn: Power Resources Phone: (510) 361-6247 Email: powernotices@ebce.org; powersettlements@ebce.org
Payments: Attn: Phone: Email:	**Payments:** Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: AP@ebce.org;
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: River City Bank ABA: 121133416 ACCT: ******7551
Credit and Collections: Attn: Phone: Email:	**Credit and Collections:** Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: powersettlements@ebce.org; powernotices@ebce.org; ap@ebce.org

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	**With additional Notices of an Event of Default to:** Attn: Power Resources 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email: powernotices@ebce.org; legal@ebce.org **With an additional copy to:** Wilson Sonsini Attn: Peter Mostow Phone: (206) 883-2541 pmostow@wsgr.com

EXHIBIT M

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit M and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice to Seller of such test. At least twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.6(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit M. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit M as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Facility;

(3) Determine the Facility charge ramp rate;

(4) Determine the Facility discharge ramp rate;

(5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("**Energy Out**");
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

(1) discharge time (minutes);

(2) charging energy (MWh);

(3) discharging energy (MWh);

(4) Stored Energy Level (MWh).

D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

E. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least [two (2)][four (4)] consecutive hours at Maximum Discharging Capacity;

(3) operated for at least [two (2)][four (4)] consecutive hours at Maximum Charging Capacity;

(4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit O);

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for [two (2)][four (4)] consecutive hours at a rate equal to the Maximum Discharging Capacity; and

(6) has an Actual Round-Trip Efficiency of at least the Minimum Efficiency Rate, as measured at the Delivery Point associated with Charging Energy, provided that if the Actual Round-Trip Efficiency is less than the Minimum Efficiency Rate, the Round-Trip Efficiency Factor shall be subject to adjustment in accordance with the definition thereof until the next SCT completed in accordance with the terms of this Agreement.

F. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may

postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

H. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, Actual Round-Trip Efficiency, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

I. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit M with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test**

Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit M.

J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first [two (2)][four (4)] hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) [two (2)][four (4)] hours), shall be divided by [two (2)][four (4)] hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.6(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

K. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTCOL

A. Conditions Precedent to SCT

- Control System Functionality: The storage facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the storage facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.

- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.

- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the

battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

- The following Commercial Operation tests will be repeated annually:
    - PMAX Capacity Test
    - Round-Trip Efficiency and Energy Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the storage facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes ("**Qualified Power Capacity**").

2. Procedure:
    i. System starting state: The storage facility will be in the on-line state with each battery subsystem at 100% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
    ii. Record the storage facility active power level at the Storage Facility Meter.
    iii. Command the storage facility to follow a signal equal to the storage facility's maximum operating level for five (5) minutes.
    iv. Record and store the storage facility active power response. Measurements will be made at the point of interconnection (POI) and by the control system with a recording in the storage facility historian.
    v. System end state: The storage facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The storage facility active power response and the commanded level shall be within ±2% as measured by the sum of values at the POI. The time to full output shall be less than 100 ms. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

_____

_____

C. Round-Trip Efficiency and Energy Test

1. The following test demonstrates the updated Efficiency Rate and amount of Energy required to fully charge the Facility (when performed annually or ad hoc).
    i. The resulting quantity of Discharging Energy is the Energy Out (as reported in Part II.B above) and the resulting quantity Charging Energy is the Energy In (as reported in Part II.B above).
    ii. The Qualified Energy is the sum of the total quantity of Discharging Energy at the Storage Facility Meter.

2. The storage facility will be operated in both the charge and discharge directions in the following order:
    i. [Seller to specify, example language below]
    ii. *[Set each Battery Subsystem to [3%] SOC.*
    iii. *Allow each Battery Subsystem to enter background cell balancing mode by maintaining a SOC of [3% for 20 minutes]. After the background cell balancing mode begins the system can be operated as normal. Allow the cell balancing function to operate in the background for at least 24 hours to allow the automatic cell balancing procedure to reach completion. This time may be reduced based on equipment suppliers' recommendations.*
    iv. *Discharge each Battery Subsystem to 0% SOC.*
    v. *Immediately perform the Round-Trip Efficiency and Capacity Test set forth below.]*

3. To be valid, the SCT must be started within twenty-four (24) hours of the end of the period (greater than four days) during which cell balancing was completed. For the duration of the SCT, the control system will be configured to have the power limiting mechanisms disabled, and each battery subsystem shall be configured to follow the charge and discharge current limits specified by their respective battery management system.

4. <u>Procedure:</u>
    i. System Starting State: The storage facility will be in the on-line state with each Battery Subsystem at 0% SOC.

ii. Verify that in the previous twenty-four (24) hour period, each Battery Subsystem completed the cell balancing procedure allowing full cell balancing to occur, as described in steps i-iv.
iii. Verify that ambient temperature measurements at all Battery Subsystems are between [18 °C and 28 °C] throughout this test.
iv. Record initial values of each Battery Subsystem SOC.
v. Command a real power charge that results in an AC power of facility's full charging power and continue the charge until the power is 2% different.
vi. Record and store the AC energy charged to the system as measured at the POI meter. Measurements will be made by the POI meter with recording in the storage facility historian.
vii. Within 5 minutes, command a real power discharge that results in an AC power output of the storage facility's maximum discharge power.
viii. Maintain the discharging until the power is 2% different.
ix. Record and store the AC energy discharged as measured at the facility meter. Measurements will be made by the Storage Facility Meter with recording in the storage facility historian.

Pass/Fail Criteria		
The measured Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate. The Qualified Energy is greater than or equal to the Storage Contract Output.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

_____

_____

EXHIBIT N

STORAGE AVAILABILITY

Monthly Storage Availability

Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" by dividing the sum of the minimum of the Available Energy Measured (AEM) and the Available Power Measured (APM) of every hour in a given month using the formula set forth below:

Monthly Storage Availability (%) = $\frac{1}{HM-HE} * \sum_{h=1}^{HM-HE} MIN\left[\left(AEM\ (h)\right), \left(APM\ (h)\right)\right]$

where:

H_M (h) = The number of hours in the month.

H_E (h) = The number of Excused Event Hours.

AEM (h) = For any Hour (h), AEM is calculated in accordance with the following formula.

$$AEM = MIN\left[1, \frac{Available\ Energy\ (h)}{Storage\ Contract\ Output(h)}\right]$$

APM (h) = For any Hour (h), APM is calculated in accordance with the following formula.

$$APM = MIN\left[1, \frac{Available\ Power\ (h)}{Storage\ Contract\ Capacity\ (h)}\right]$$

Hour = The consecutive sixty-minute period commencing on the hour, every hour, using local time at the storage facility.

Available Power (h) = For any Hour (h), the average percentage of available inverters multiplied by the Qualified Power Capacity; provided, that the number of inverters corresponding to capacity in excess of the Qualified Power Capacity shall be removed from the denominator for purposes of this calculation

Available Energy (h) = For any Hour (h), the average percentage of available racks multiplied by the Qualified Energy; provided, that the number of racks corresponding to energy storage capability in excess of the Qualified Energy shall be removed from the denominator for purposes of this calculation

Qualified Power Capacity shall be assessed at least annually and is the PMAX value determined in the PMAX capacity test within Exhibit M.

Qualified Energy shall be assessed at least annually and is performed according to the Round-Trip Efficiency and Energy Test within Exhibit M.

Excused Event Hours means, with respect to the applicable month, the sum of all Hours during which the storage facility is operating below one hundred percent (100%) of Installed Capacity as result of Force Majeure Events, System Emergencies, or the Operating Restrictions in Exhibit O. All Excused Event Hours are removed from the calculation. Any unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 AM of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AA = 100%

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 95%, then:

AA = 100% - [(98% - Monthly Storage Availability)]

(iii) If the Monthly Storage Availability is less than 95% but greater than or equal to 70%, then:

AA = 100% - 3%- [(95% - Monthly Storage Availability) x 2]

(iv) If the Monthly Storage Availability is less than 70%, then:

AA = 0

EXHIBIT O

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit O, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and Communications Protocols.

1. XXXX
2. XXXX

SAMPLE OPERATING RESTRICTIONS

Maximum Stored Energy Level:	[XX] MWh [number in MWh representing maximum amount of energy that may be charged to the Facility]
Minimum Stored Energy Level:	[XX] MWh [number in MWh representing the lowest level to which the Facility may be discharged]
Maximum Charging Capacity:	[XX] MW [number in MW representing the highest level to which the Facility may be charged]
Minimum Charging Capacity:	[XX] MW [number in MW representing the lowest level at which the Facility may be charged]
Maximum Discharging Capacity:	[XX] MW [number in MW representing the highest level at which the Facility may be discharged]
Minimum Discharging Capacity:	[XX] MW [number in MW representing the lowest level at which the Facility may be discharged]
Maximum State of Charge (SOC) during Charging:	[100]%
Minimum State of Charge (SOC) during Discharging:	[0]%
Ramp Rate:	The Facility shall have the ability to discharge at the Maximum Discharging Capacity in two seconds.
Annual Cycles:	Maximum of 365 Full Cycle Equivalents per Contract Year with no monthly cap.

Daily Dispatch Limits:	Charging: [2 per day] Discharging: [2 per day] Partial Charging/Discharging: [maximum number of times per day Buyer may begin charging or discharging the Facility without reaching either the Maximum SOC or Minimum SOC, respectively]
Maximum Time at Minimum Storage Level:	[Seller-specified, if applicable]
Other Operating Limits:	The average resting state of charge per Contract Year must be below fifty percent (50%).
Ancillary Services Capability:	[Seller-specified, if applicable]

EXHIBIT P

METERING DIAGRAM

EXHIBIT Q

WORKFORCE DEVELOPMENT

CONFIDENTIAL
EBCE PRO FORMA
04 May 2021

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [*Seller Name, e.g., Project Company LLC*] ("**Seller**")

Buyer: East Bay Community Energy Authority, a California joint powers authority ("**Buyer**")

Description of Facility: A [XX] MW [e.g., solar photovoltaic, wind, geothermal, small hydro, etc.] project located in _____ County, in the State of _____.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
CEC Pre-Certification Obtained	
Financing Milestone	
Documentation of Conditional Use Permit if required: CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

Delivery Term: The period for Product delivery will be for [XX] Contract Years.

Expected Energy: "**Expected Energy**" means [XXX,XXX] MWh during the first 12-month Contract Year and for each 12-month Contract Year thereafter during the Delivery Term. [*If there is an annual adjustment for degradation, this should be noted.*]

Contract Year	Expected Energy (MWh)
1	[*Subject to adjustment based upon Commercial Operation Date]*
2 – [XX]	

Hourly Settlement Quantity: *If applicable*]

Hour Ending	Hourly Settlement Quantity (MW)
0100 - 0600	N/A
0700 - 2200	[XX]
2300 - 2400	N/A

Guaranteed Capacity: [XX] MW

Guaranteed RA Amount: [XX] MW

Contract Price: **[*Select one*]**

☐ **Option A:**

The "**Contract Price**" shall be $[XX.XX]/MWh, [with escalation at 2% per Contract Year] [with no] escalation.

☐ **Option B:**

"**Contract Price**" shall be equal to the sum of the Energy Price and the REC Price, less the CAISO Credit.

Contract Price shall be calculated as follows:

Contract Price = (Energy Price + REC Price) - CAISO Credit

Where:

"**CAISO Credit**" means the Energy Price paid by the CAISO for the energy associated with the Product.

"**Energy Price**" means the applicable day-ahead hourly market, hour-ahead fifteen-minute market, or real-time five-minute market, locational marginal price clearing at the Delivery Point, as published by the CAISO, per MWh of energy delivered.

"**REC Price**" is equal to $XX.XX/MWh.

Product:

☒ Facility Energy
☒ Green Attributes (Portfolio Content Category 1)
☒ Capacity Attributes (select options below as applicable)
  ☐ Energy Only Status
  ☒ Full Capacity Deliverability Status on and after the RA Guarantee Date
☒ Ancillary Services

Scheduling Coordinator: [Buyer or Buyer's agent][Seller or Seller's agent]

Development Security and Performance Security

Development Security: $90/kW of Guaranteed Capacity

Performance Security: $105/kW of Guaranteed Capacity

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "**Agreement**") is entered into as of _____, 2021 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.14.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Alternating Current**" or "**AC**" means alternating current.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Facility. As of the Effective Date, the Parties agree and acknowledge that there are no Ancillary Services for Seller to provide and thus no value to the Ancillary Services.

"**Approved Forecast Vendor**" means (x) CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"**Available Generating Capacity**" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Bid**" has the same meaning set forth in the CAISO Tariff.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means East Bay Community Energy Authority, a California joint powers authority.

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of such period shall not include any Energy that was not

generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Buyer Default**" means an Event of Default of Buyer.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**CAISO**" means the California Independent System Operator Corporation.

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce and deliver energy.

Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, Other Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

"**CEC Precertification**" means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"**CEQA**" means the California Environmental Quality Act.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"**Claim**" has the meaning set forth in Section 16.2.

"**COD Certificate**" has the meaning set forth in Exhibit B.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"**Compliance** " has the meaning set forth in Section 3.14.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.14.

"**Compliance Showings**" means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Price**" has the meaning set forth on the Cover Sheet; provided, however, that for all Facility Energy and Deemed Delivered Energy generated or deemed generated during the period on and after the Commercial Operation Date until the RA Guarantee Date, the Contract Price shall be equal to the Test Energy Rate.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating and replacing the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**CPUC Filing Guide**" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"**CPUC System RA Penalty**" has the meaning set forth in the Resource Adequacy Rulings.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Curtailment Cap**" is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

"**Curtailment Order**" means any of the following:

(a) CAISO or another Governmental Authority orders, directs, alerts, or provides notice to a Party, including through a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator; or

(e) a curtailment by Seller.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security.

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.3.

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Deemed Delivered Energy**" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site, less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delivery Point**" has the meaning set forth in Exhibit A.

"**Delivery Term**" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Effective FCDS Date**" means the date identified in Seller's Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

"**Eligible Renewable Energy Resource**" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

"**Energy**" means electrical energy (measured in MWh) generated by the Facility.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Excess MWh**" has the meaning set forth in Exhibit C.

"**Executed Interconnection Agreement Milestone**" means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Construction Start Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

"**Expected Energy**" means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each 12-month Contract Year in the quantity specified on the Cover Sheet.

"**Facility**" means the electric generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

"**Facility Energy**" means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**Facility Meter**" means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Financial Close**" means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

"**Financing Milestone**" means the date set forth on the Cover Sheet for Seller to satisfy the following requirements demonstrating the Facility's eligibility for the [***ITC/PTC***] by [***Seller to propose suggested criteria for establishing eligibility, e.g., safe harboring of equipment prior to sunset dates, tax counsel opinion, etc.***].

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

"**Forecasting Penalty**" means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility, multiplied by (B) the absolute value of the Real-Time Price in such hour.

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.8(a).

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Full Capacity Deliverability Status Finding**" means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

"**Future Environmental Attributes**" shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or

parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party hereto.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to [*eighty-five percent (85%) – solar][seventy-five percent (75%) – wind*] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement

Period.

"**Guaranteed RA Amount**" means the amount of Resource Adequacy Benefits (in MW) from the Facility Net Qualifying Capacity (NQC) (in MW) of the Facility as set forth on the Cover Sheet.

"**Guarantor**" means, with respect to the Party providing Performance Security in the form of a Guaranty, any Person that:

(a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued,

(b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer;

(c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's;

(d) has a tangible net worth of at least One Hundred Million Dollars ($100,000,000);

(e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction; and

(f) executes and delivers a Guaranty for the benefit of the other Party.

"**Guaranty**" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably agreed to by the Parties.

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.3.

"**Indemnified Party**" has the meaning set forth in Section 16.3.

"**Indemnifying Party**" has the meaning set forth in Section 16.3.

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Capacity**" means the actual generating capacity of the Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate(s) substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means the interconnection agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the

Guaranteed Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Interim Deliverability Status**" has the meaning set forth in the CAISO Tariff.

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

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or 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, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank 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 substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**Local Capacity Area Resources**" has the meaning set forth in the CAISO Tariff.

"**Local RAR**" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

"**Losses**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" means the amount of Facility Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, Curtailment Period, System Emergency, Buyer Default or Buyer Curtailment Periods .

"**Major Project Development Milestone**" has the meaning set forth in Exhibit B.

"**Major Subcontractors**" means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of Ten Million Dollars ($10,000,000) for performance of any part of the Work at the Site.

"**Meter Service Agreement**" has the meaning set forth in the CAISO Tariff.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

"**Moody's**" means Moody's Investors Service, Inc.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than Zero dollars ($0).

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"**Net Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by electronic mail (email).

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**NP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

Operating Committee" means one representative each from Buyer and Seller appointed pursuant to Section 6.3.

"**Operating Procedures**" or "**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit O.

"**Other Attributes**" means any and all attributes, products or services, associated with the existence or operation of the Facility that may be claimed or tracked other than (a) Energy, (b) Green Attributes, (c) Capacity Attributes and (d) Renewable Energy Incentives.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means each period consisting of two (2) consecutive rolling Contract Years.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Planned Outage**" has the meaning set forth in Section 4.6(a).

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PTC**" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility's wind turbines that are eligible to receive Production Tax Credits at the time of determination.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

"**RA Guarantee Date**" means the date that is sixty (60) days after the Commercial Operation Date.

"**RA Shortfall Amount**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the Guaranteed RA Amount for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, or (c) the CAISO's reduction in the Net Qualifying Capacity of the Facility due to the Facility's actual Forced Facility Outage rate (i.e., past performance).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month commencing after the RA Guarantee Date during which there is an RA Shortfall Amount.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Price**" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

"**Remedial Action Plan**" has the meaning in Section 2.4.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"**Replacement Green Attributes**" means Renewable Energy Credits that are Portfolio Content Category 1 and were generated by a California RPS-eligible generating resource that does not produce emissions.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and, to the extent that Facility was eligible for Local RAR, located within NP 15 or Greater Bay Area Local Capacity Area Resource.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for Buyer pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 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, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the

functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.9.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Site**" means the necessary real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

"**Site Control**" means that, for the Contract 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.

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or

property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Tax Credits**" means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Test Energy**" means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means _____, a [State of organization] [Type of entity].

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" or similar words shall be deemed to be followed by the words "means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work 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) 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;

(l) "or" is not necessarily exclusive; 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.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the "Contract Term"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product (other than Test Energy) are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(n) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(o) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement has been delivered to Buyer;

(p) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement has been delivered to Buyer;

(q) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(r) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(s) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(t) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(u) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages, and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**.

(a) In accordance with and subject to the terms and conditions of this Agreement, at all times during the Delivery Term Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, all of the Facility Energy delivered to the Delivery Point and all of the Product produced by or associated with the Facility.

(b) Notwithstanding the foregoing:

Seller's obligation to sell and deliver Facility Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) a Buyer Bid Curtailment, (C) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Order, (D) a Curtailment Period; provided that such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement, (E) a period of Seller suspension due to a Buyer Default pursuant to Section 11.1 or (F) as necessary to maintain health and safety pursuant to Section 6.2; and

Buyer's obligation to accept Facility Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Period, (C) a Curtailment Period, or (D) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1; and

Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, or (C) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1.

(c) Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale in the market or to any third party, and retain and receive any and all related revenues.

(d) Subject to Buyer's obligation to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Compensation**. Buyer shall pay Seller for the Product in accordance with Exhibit C.

3.3 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5, and Sections 3.5(b) and 3.14, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration on terms acceptable to Seller.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the original economic balance or the other material terms of this Agreement.

3.6 **Test Energy**. No less than five (5) Business Days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis until the Commercial Operation Date. Seller shall be compensated for Test Energy in an amount equal to one-hundred percent (100%) of net CAISO revenues associated with such Test Energy [*If Seller is SC, modify language to allow Seller to retain such revenues.*] (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. As between Buyer and Seller, Seller is

responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes, if any, existing during the Delivery Term.

(c) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(d) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that Capacity Attributes belong exclusively to Buyer.

(e) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy Benefits; provided that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(f) At all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **Resource Adequacy Failure**

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification**. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **California Renewables Portfolio Standard**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.10. [STC 6].

Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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].

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

3.11 **Change in Law**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.5, 3.7(c), 3.9, 3.10, 4.3(g), 4.5, 4.8, and 4.10 (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at twenty-five thousand dollars ($25,000.00) per MW of Guaranteed Capacity in aggregate at over the Contract Term (the "**Compliance Expenditure Cap**").

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after

Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

(f) Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.12 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party prior to the Construction Start Date, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms acceptable to both Parties in their sole discretion.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(c) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(d) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(e) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer.

(f) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the then-current rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer.

(g) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(h) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(i) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.5 **Seller Equipment Required for Curtailment Instruction Communications**. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in

accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, (a "**Planned Outage**").

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**.[1] Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (1) Deemed Delivered Energy and (2) Lost Output from the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

[Alternate language if Seller is providing a shaped product:]

4.7 **Failure to Deliver Hourly Settlement Quantity**. If Seller fails to deliver any portion of the Hourly Settlement Quantity, and such failure is not excused under the terms of this Agreement, Seller shall be subject to damages equal to the amount of the unexcused shortfall (in MWh) for each Settlement Interval multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for such Settlement Interval. "**Replacement Price**" means the amount in $/MWh that is the sum of (a) Day-Ahead LMP at the Delivery Point for the applicable Settlement Interval, plus (b) (i) $25.00/MWh or, or at Buyer's option, (ii) the market value of Replacement Green Attributes as determined by Buyer in a commercially reasonable manner.

4.8 **WREGIS**. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be

[1] Note – Section 4.7 (Guaranteed Energy Production) is not applicable if Seller is providing a shaped product.

given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.9 **Interconnection Capacity**. Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity under the Interconnection Agreement during the Test Energy period and throughout the Delivery Term.

4.10 **Green-E Certification**. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Facility Energy was generated, whichever is later.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation solar panels.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller

becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) continue to provide for separate metering and a separate CAISO Resource ID for the Facility.

6.4 **Operating Committee and Operating Procedures**.

Buyer and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility.

The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement to address: matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. The Operating Committee shall develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement.

The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that except to the extent explicitly provided for in this Agreement, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this Agreement.

ARTICLE 7
METERING

7.1 **Metering**. The Facility shall be separately metered from any other generation or storage facility. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters

will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit P, and a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. Seller may elect to install and maintain, at its own expense, backup metering devices.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), calculation of Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably agreed by the Parties within sixty (60) days following the Effective Date, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, promptly provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated or payments made pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice, payment or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution

along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they may discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Except as expressly provided otherwise, each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5:00 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices sent pursuant to Article 11 (Event of Default), Article 15 (Dispute Resolution), and Article 16 (Indemnification) must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**").

(d) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than

under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly 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. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days of the Guaranteed Construction Start Date;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days;

(vii) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year;

(viii) if, in any Performance Measurement Period during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws on the Performance Security other than to satisfy a Termination Payment;

(x) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(xi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least BBB by S&P or Baa2 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) or 11.1(b)(iv))), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting

Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR

ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [Type of entity], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [***limited liability company][corporate***] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by

laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall 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**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Reserved**.

13.6 **Workforce Development and Supplier Diversity**. Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q. In addition, Seller agrees to, or cause its contractors to, complete an annual supplier diversity and labor practices questionnaire provided by Buyer and, upon request of Buyer, to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

14.2 **Collateral Assignment**.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to

require the report with respect to a particular Event of Default after that Event of Default has been cured;

Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or

termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller**. Except as may be precluded by, or would cause the Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq,) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller.

14.4 **Permitted Assignment by Buyer**. Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under the PPA. Buyer may make such assignment upon not less than thirty (30) days' notice by delivering a written request for such assignment in the form attached to the PPA. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 **[Purchase Option**. Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties), and in either case, at Seller's sole cost) of the Facility (the "**Purchase Option**"). The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term.

14.6 **Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity**.

(a) For the duration of the Delivery Term, Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or

Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**")). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "**ROFR Offer**"), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the "**Project PPA**" or the "**PPA**") incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "**Material Terms**").

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party (the "**Third-Party Transaction**"); provided, that if such Third-Party Transaction is not consummated within twelve months of the date of the ROFR Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

In addition to Buyer's Right of First Refusal, upon request of Buyer, Seller shall provide a written proposal to Buyer to add new storage technologies to the Facility, at a price not to exceed the lesser of (i) current market prices or (ii) Seller's direct cost to add such capacity, plus ten percent (10%).][2]

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of 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. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement,

[2] NTD: Buyer and Seller to discuss.

within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remediates available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees (collectively, "**Indemnifiable Losses**") arising out of or relating to or in any way connected withthe Indemnifying Party's or its Affiliates' negligence, willful misconduct or breach of the Agreement.

(b) In those circumstances in which Seller acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party against Indemnifiable Losses arising out of or relating to or in any way connected with the Indemnifying Party's or its Affiliates' (i) ownership, development, construction, operation or maintenance of the Facility, including the Site(s); (ii) breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility or Site; or (iii) delivery of Energy up to and at the Delivery Point.

(c) In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer's receipt of Energy after the Delivery Point.

16.2 **Claim Notice**.

(a) **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**").

The Notice is referred to as a "**Notice of Claim**." A Notice of Claim will specify, in reasonable detail, the facts known to the the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

16.3 **Defense of Claims**. If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Amounts Owed**. Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.5 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (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 Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). 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.

Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000.00) 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.

Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. 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.

Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies**. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to

compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

19.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated

as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[SELLER]

By: _____
Name: _____
Title: _____

EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs: (To be filled in prior to execution)

County:

CEQA Lead Agency:

Type of Facility:

Operating Characteristics of Facility:

Guaranteed Capacity: [___] MW (AC)

Maximum Capacity: [___] MW

Delivery Point: PNode

Facility Meter: See Exhibit P.

P-node: [If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's point of interconnection with the CAISO Grid.]

Participating Transmission Owner:

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Major Project Development Milestones**.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract or an equipment supply agreement and a balance of plant contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. "**Major Project Development Milestone**" means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Construction Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Construction Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Construction Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestone. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when 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 H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) if Seller provides Buyer at least ninety (90) days' advance Notice that the Facility will achieve Commercial Operation before the Expected Commercial Operation Date, the date on which Commercial Operation is achieved; provided, that such earlier date of Commercial Operation shall not, absent Buyer's express written consent, occur earlier than one hundred twenty (120) days before the Expected Commercial Operation Date.

    a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

    b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

    c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within ninety **(**90) days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis due to a

Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the "**Development Cure Period**"). Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period for a Force Majeure Event if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3.

5. **Failure to Reach Guaranteed Capacity**.

   a. *Guaranteed Capacity*. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(b) Curtailment Payments. Notwithstanding any provision in this Agreement to the contrary, Seller shall receive no compensation from Buyer for (i) Facility Energy or Deemed Delivered Energy during any Curtailment Period (ii) Deemed Delivered Energy in amounts below the Curtailment Cap.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

[*If Seller is not providing a shaped product:*

(e) Contract Price. For each MWh of Facility Energy and Deemed Delivered Energy, if any, up to one hundred five percent (105%) of the Expected Energy for such Contract Year, Buyer shall pay the Contract Price;

(f) Excess Contract Year Deliveries Over 105%. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy equals or exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) seventy-five percent (75%) of the Contract Price, but not less than $0.00/MWh.

(g) PTC Amount. During the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving the PTC, Buyer shall also pay the

PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred five percent (105%) of the Expected Energy for such Contract Year.

(h) Excess Contract Year Deliveries Over 115%. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy equals or exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be $0.00/MWh.]

[*If Seller is providing a shaped product:*

(i) Contract Price. For each MWh of Facility Energy and Deemed Delivered Energy, if any, up to the Annual Contract Quantity, Buyer shall pay the Contract Price.

(j) PTC Amount. If applicable, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving the PTC, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds the Annual Contract Quantity.

(k) Excess Contract Year Deliveries. During any Contract Year, if the amount of Facility Energy for such Contract Year exceeds the Annual Contract Quantity, then for the amount of Facility Energy that would exceed the Annual Contract Quantity (the "**Excess MWh**"), (i) Buyer shall have no obligation to purchase or receive such Excess MWh, and (ii) Seller shall have the right to sell all or any portion of the Product associated with the Excess MWh to one or more third parties and retain all resulting revenue. "**Annual Contract Quantity**" means the sum of all Hourly Settlement Quantity amounts for the applicable Contract Year.]

[If applicable, the Contract Price shall be subject to a Settlement Point adjustment. The "**Settlement Point**" shall be [the pNode/ NP-15 (TH_NP15_GEN-APND)].

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this

Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's third party costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are likely to potentially affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months

11. Prevailing wage reports as required by Law.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
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AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (i) $50/MWh or (ii) the market value of Replacement Green Attributes generated by the Facility during the Performance Measurement Period, as determined by Buyer in a commercially reasonable manner.

D = the Contract Price for the Performance Measurement Period, in $/MWh

"**Adjusted Energy Production**" shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after a Contract Year which ends each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*licensed professional engineer*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority **(**"**Buyer**"**)** in accordance with the terms of that certain Renewable Power Purchase 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*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System;

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

5. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.

6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase 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.

I hereby certify the following:

(a) The performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (the "**Installed Capacity**");

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [*SELLER NAME*] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase 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 the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on [*DATE*] (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612

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 East Bay Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [email to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1999 Harrison Street, Suite 800, Oakland, CA 94612. 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]

(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 East Bay Community Energy Authority, a California joint powers authority, 1999 Harrison Street, Suite 800, Oakland, CA 94612, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of East Bay Community Energy 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 East Bay Community Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [*DATE*] (the "Effective Date") by and between [_____], a [State of formation and type of entity] ("Guarantor"), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

A. Buyer and [*SELLER ENTITY*], a [State of formation and type of entity] ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [*DATE*].

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty**. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars ($_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice**. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and

conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty**. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity

or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company***][***corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance

with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at [____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at [____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

9. **Miscellaneous**. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and

understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*Signature on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: powernotices@ebce.org
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
Invoices: Attn: Phone: Email:	**Invoices:** Attn: Power Resources Phone: (510) 827-2051 Email: ap@ebce.org; powersettlements@ebce.org
Scheduling: Attn: Phone: Email:	**Scheduling:** Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: powerscheduling@ebce.org
Confirmations: Attn: Phone: Email:	**Confirmations:** Attn: Power Resources Phone: (510) 361-6247 Email: powernotices@ebce.org; powersettlements@ebce.org
Payments: Attn: Phone: Email:	**Payments:** Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: AP@ebce.org;
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: River City Bank ABA: 121133416 ACCT: ******7551
Credit and Collections: Attn: Phone: Email:	**Credit and Collections:** Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: powersettlements@ebce.org; powernotices@ebce.org; ap@ebce.org

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	**With additional Notices of an Event of Default to:** Attn: Power Resources 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email:powernotices@ebce.org; legal@ebce.org **With an additional copy to:** Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

EXHIBIT O

OPERATING RESTRICTIONS

EXHIBIT P

METERING DIAGRAM

EXHIBIT Q

WORKFORCE DEVELOPMENT

CONFIDENTIAL
EBCE PRO FORMA
ENERGY + STORAGE PPA
27 MAY 2021

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [*Seller Name, e.g., Project Company LLC*] ("**Seller**")

Buyer: East Bay Community Energy Authority, a California joint powers authority ("**Buyer**")

Description of Facility: A [XX] MW [e.g., solar photovoltaic, wind, geothermal, small hydro, etc.] electricity generating facility, along with a [hybrid][co-located and dedicated] [XX MW/XXX MWh] battery energy storage facility, all located in _____ County, in the State of _____, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
CEC Pre-Certification Obtained	
Financing Milestone	
Documentation of Conditional Use Permit if required: [ ] CEQA, [ ] Cat Ex, [ ]Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

Delivery Term: [XX] Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1 – [XX]	

Guaranteed Capacity: [XX] MW

Guaranteed RA Amount: The Qualifying Capacity (QC) of the Facility.

Storage Contract Capacity: [XX] MW for [two (2) hour] [four (4) hour] discharge

Storage Contract Output: [XX] MWh (based on [two (2) hour] [four (4) hour] discharge)

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate	Guaranteed Storage Availability
1 – [XX]	88.0%	98.0%

Minimum Efficiency Rate: [Seventy percent (70%)]

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
[1 – XX]	$XX/MWh[1] [(flat) with no escalation] [with a two percent (2%) annual escalator]

The Storage Rate shall be:

Contract Year	Storage Rate
[1 – XX]	$X.XX/kW-mo. (flat) with no escalation

1 Note that Renewable Rate may reflect an adjustment between the LMP at the Delivery Point (e.g., PNode) and the Settlement Point (e.g., NP-15 trading hub or PG&E DLAP).

[If applicable]

The Tolling Rate shall be:

Contract Year	Tolling Rate
[1 – XX]	$X.XX/MWh (flat) with no escalation

Product:

☒ Generating Facility Energy
☒ Green Attributes (Portfolio Content Category 1)
☒ Storage Capacity
☒ Capacity Attributes (select options below as applicable)
  ☐ Energy Only Status
  ☒ Full Capacity Deliverability Status and Expected FCDS Date:
☒ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security: $90/kW of Contract Capacity

Performance Security: $105/kW of Contract Capacity

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____ (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

"**Actual Monthly NQC**" means the amount of Net Qualifying Capacity able to be shown during a given month.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control", "controlled by", and "under common control with", as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Alternating Current**" or "**AC**" means alternating current.

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Facility.

"**Approved Forecast Vendor**" means (x) any of [XXXX] or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"**Availability Adjustment**" or "**AA**" has the meaning set forth in Exhibit P.

"**Available Generating Capacity**" means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"**Available Energy**" has the meaning set forth in Exhibit N.

"**Available Energy Measured**" has the meaning set forth in Exhibit N.

"**Available Power**" has the meaning set forth in Exhibit N.

"**Available Power Measured**" has the meaning set forth in Exhibit N.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Bid**" has the meaning as set forth in the CAISO Tariff.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time (PPT) for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means East Bay Community Energy Authority, a California joint powers authority.

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where the Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce Generating Facility Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Buyer Default**" means an Event of Default of Buyer.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.10(a).

"**CAISO**" means the California Independent System Operator Corporation.

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between

the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, other Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

"**CEC Precertification**" means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"**CEQA**" means the California Environmental Quality Act.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means the as-available Energy produced by the Generating Facility and delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and, unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**CIL Adjustment Factor**" has the meaning set forth in Section 3.5(c).

"**Claim**" has the meaning set forth in Section 16.2(a).

"**COD Certificate**" has the meaning set forth in Exhibit B.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" or "**COD Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) sixty (60).

"**Compliance Action**" has the meaning set forth in Section 3.12.

"**Compliance Showings**" means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12.

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to [$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Capacity**" means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

"**Contract Price**" has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**CPUC System RA Penalty**" has the meaning set forth in the Resource Adequacy Rulings.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Curtailment Cap**" is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Cycle**" or "**Full Cycle Equivalent**" means a quantity of Discharging Energy (in MWh) equal to the Storage Contract Output.

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security.

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.3(c).

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Deemed Delivered Energy**" means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). For all purposes under this Agreement, including compensation

under Exhibit C and the Curtailment Cap, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Delivery Point**" has the meaning set forth in Exhibit A.

"**Delivery Term**" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Effective FCDS Date**" means the date identified in Seller's Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"**Electrical Losses**" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, losses of Energy within the Storage Facility's energy storage equipment along with all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of Generating Facility Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) as applicable, between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of "Electrical Losses" and "Station Use" hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

"**Eligible Renewable Energy Resource**" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

"**Energy**" means alternating current electrical energy measured in MWh.

"**Energy In**" has the meaning set forth in Part II.B of Exhibit O.

"**Energy Out**" has the meaning set forth in Part II.B of Exhibit O.

"**Energy Management Software**" has the meaning set forth in in Exhibit A.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Excused Event Hours**" has the meaning set fort in Exhibit N.

"**Excess MWh**" has the meaning set forth in Exhibit C.

"**Executed Interconnection Agreement Milestone**" means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Construction Start Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

"**Expected Energy**" means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

"**Facility**" means the Generating Facility and the Storage Facility.

"**Facility Energy**" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period.

"**Facility Meter**" means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Financial Close**" means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

"**Financing Milestone**" means the date set forth on the Cover Sheet for Seller to satisfy the following requirements demonstrating the Facility's eligibility for the [***ITC/PTC***] by [***Seller to propose suggested criteria for establishing eligibility, e.g., safe harboring of equipment prior to sunset dates, tax counsel opinion, etc.***].

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forecasting Penalty**" means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.10(a).

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Full Capacity Deliverability Status Finding**" means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

"**Full Cycle Equivalent**" means either (a) a Cycle or (b) the sum of more than one Partial Cycles that equal the Discharging Energy in one Cycle.

"**Future Environmental Attributes**" shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or

other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"**Generating Facility**" means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Generating Facility Energy to (i) to the Delivery Point, and (ii) to the Storage Facility as Charging Energy; provided, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Energy**" means all Energy that is delivered from the Generating Facility as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use (if any).

"**Generating Facility Meter**" means the CAISO-approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Generating Facility Metering Point**" means the location or locations of the Generating Facility Meter shown on Exhibit R.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that "Governmental Authority" shall not in any event include any Party.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Grid Charging Effective Date**" has the meaning set forth in Section 3.13.

"**Guaranteed Capacity**" means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Efficiency Rate**" means the guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet

"**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to [***85% if solar, 75% if wind***] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"**Guaranteed RA Amount**" means the amount of Resource Adequacy Benefits (in MW) of the Facility as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.8.

"**Guarantor**" means, with respect to the Party providing Performance Security in the form of a Guaranty, any Person that:

(a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued,

(b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer;

(c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's;

(d) has a tangible net worth of at least One Hundred Million Dollars ($100,000,000);

(e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction; and

(f) executes and delivers a Guaranty for the benefit of the other Party.

"**Guaranty**" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

"**Hour**" has the meaning set forth in Exhibit N.

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1.

"**Indemnified Party**" has the meaning set forth in Section 16.1.

"**Indemnifying Party**" has the meaning set forth in Section 16.1.

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Capacity**" means the sum of (x) the Installed Generating Capacity and (y) the Installed Battery Capacity.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Installed Generating Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means the interconnection agreement or agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Interim Deliverability Status**" has the meaning set forth in the CAISO Tariff.

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

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax

equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or 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, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank 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 substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

"**Local RAR**" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

"**Losses**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" means the amount of Facility Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, Curtailment Period, System Emergency, Buyer Default or Buyer Curtailment Periods.

"**Major Subcontractors**" means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of Ten Million Dollars ($10,000,000) for performance of any part of the Work at the Site.

"**Maximum Charging Capacity**" has the meaning set forth in Exhibit A.

"**Maximum Discharging Capacity**" has the meaning set forth in Exhibit A.

"**Maximum Stored Energy Level**" has the meaning set forth in Exhibit O.

"**Meter Service Agreement**" has the meaning set forth in the CAISO Tariff.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"**Minimum Efficiency Rate**" means the percentage specified on the Cover Sheet.

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

"**Monthly Storage Availability**" has the meaning set forth in Exhibit P.

"**Moody's**" means Moody's Investors Service, Inc.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than Zero dollars ($0).

"**Negative LMP Costs**" has the meaning set forth in Exhibit C.

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"**Net Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by electronic mail (email).

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**NP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

Operating Committee" means one representative each from Buyer and Seller appointed pursuant to Section 6.4.

"**Operating Procedures**" or "**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit Q.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

"**Partial Cycle**" means a quantity of Discharging Energy (in MWh) that is less than one hundred percent (100%) of the Storage Contract Output.

"**Participating Generator Agreement**" has the meaning set forth in the CAISO Tariff.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means each period consisting of two (2) consecutive rolling Contract Years.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

"**Person**" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Planned Outage**" has the meaning set forth in Section 4.6(a).

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PTC**" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Energy from the Generating Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility's wind turbines that are eligible to receive Production Tax Credits at the time of determination.

"**Qualified Energy**" has the meaning set forth in Part III.C of Exhibit M.

"**Qualified Power Capacity**" has the meaning set forth in Part III.B of Exhibit M.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

"**RA Guarantee Date**" means the date that is sixty (60) days after Commercial Operation Date.

"**RA Shortfall Amount**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the Guaranteed RA Amount of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, or (c) the CAISO's reduction in the Net Qualifying Capacity of the Facility due to the Facility's actual Forced Facility Outage rate (i.e., past performance).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month commencing after the RA Guarantee Date during which there is an RA Shortfall Amount.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Price**" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

"**Receiving Party**" has the meaning set forth in Section 18.2.

"**Reduced MNQC**" has the meaning set forth in Section 3.5(c)."**Remedial Action Plan**" has the meaning in Section 2.4.

"**Renewable Energy Credit**" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet; provided, however, that for all Generating Facility Energy and Deemed Delivered Energy generated or deemed generated during the period on and after the Commercial Operation Date until the RA Guarantee Date, the Renewable Rate shall be equal to the Test Energy Rate.

"**Replacement Green Attributes**" means Renewable Energy Credits that are Portfolio Content Category 1 and were generated by a California RPS-eligible generating resource that does not produce emissions.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and, to the extent that Facility was eligible for Local RAR, located within NP 15 or Greater Bay Area Local Capacity Area Resource.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Capacity**" has the meaning set forth in the CAISO Tariff

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements established for Buyer pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 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, 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.

"**Round-Trip Efficiency Factor**" means (a) if the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, one hundred percent (100%), (b) if the Efficiency Rate is less than the Guaranteed Efficiency Rate but greater than or equal to the Minimum Efficiency Rate, the Efficiency Rate, or (c) if the Efficiency Rate is less than the Minimum Efficiency Rate, zero percent (0%).

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the

functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.9.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.10(a).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

"**Site Control**" means that, for the Contract 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.

"**Station Use**" means:

(a) any and all Energy that is used within the Facility to power electrical loads that are necessary for operation of the Facility, including information technology, telecommunications,

lights, motors, cooling and other thermal management equipment, control systems including battery management systems, and inverters; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for [two (2)][four (4)] consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge Energy.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Storage Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

"**Storage Contract Capacity**" means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the product of the Storage Contract Capacity multiplied by [two (2)/four (4)] hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

"**Storage Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including the Energy Management Software and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Storage Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Storage Facility Metering Point**" means the location or locations of the Storage Facility Meter shown on Exhibit R.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Part II.I of Exhibit O.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Tax Credits**" means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Test Energy**" means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

["**Tolling Rate**" has the meaning set forth on the Cover Sheet.]

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means _____, a [State of organization] [Type of entity].

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.10(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" or similar words shall be deemed to be followed by the words "means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work 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) 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

(l) "or" is not necessarily exclusive; 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.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed

Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and

approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

3.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing

the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all net CAISO revenues received by Buyer for the Facility Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO

and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that Capacity Attributes belong exclusively to Buyer.

(e) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy Benefits; provided that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(f) At all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **Resource Adequacy Failure**

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller

to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

(c) Change in Law. Notwithstanding anything in this Agreement to the contrary, if, in any given month following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that the Facility is eligible to provide, thereby reducing the maximum achievable Net Qualifying Capacity of the Facility below the Guaranteed RA Amount (such new maximum achievable Net Qualifying Capacity, the "**Reduced MNQC**"), then the RA Shortfall Amount for such month shall be equal to the difference in the Guaranteed RA Amount and the product of the Actual Monthly NQC and the CIL Adjustment Factor. For the purposes of this subsection (c), the "**CIL Adjustment Factor**" means the Guaranteed RA Amount divided by the Reduced MNQC.

3.9 **CEC Certification and Verification**. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Reserved**.

3.11 **California Renewables Portfolio Standard**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.10. [STC 6].

(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].

(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 WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

3.12 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.5, 3.7(b) and (c), 3.9, 3.11, 4.3(g), 4.4(d), 4.10, 4.12, (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at twenty-five thousand dollars ($25,000.00) per MW of Guaranteed Capacity in aggregate at over the Contract Term (the "**Compliance Expenditure Cap**").

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions. If Buyer

does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy (i.e., energy not produced by the Generating Facility) to provide Charging Energy or conversion from two (2) to one (1) CAISO Resource IDs; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) in their sole discretion as set forth in a written agreement executed by the Parties; provided, further, that no such changes shall jeopardize or adversely affect Seller's right to claim the ITC on the full cost of the Facility, or allow Seller to allocate any administrative or similar costs to Buyer. The date on which the Parties execute any such agreement to provide Charging Energy is herein referred to as the "**Grid Charging Effective Date**".

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy.

These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use best efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management**.

(a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used

to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be Generating Facility Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of Generating Facility Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. No Charging Notice may provide for the delivery of Charging Energy from any source except the Generating Facility prior to the Grid Charging Effective Date. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Contract Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Procedures.

(g) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided that, between June 1st and September 30th of any calendar year, Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility (a "**Planned Outage**").

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer

Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (1) Deemed Delivered Energy and (2) Lost Output from the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability and Efficiency**.

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-eight percent (98%) (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P).

(c) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller's payment of liquidated damages made pursuant to Exhibit C.

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, Buyer shall (x) pay Seller

the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Station Use**. Seller will be responsible for procuring and paying for all necessary retail electricity required to operate the Facility. Neither Charging Energy nor Discharging Energy may be used to provide Energy required for Station Use. Seller shall reimburse Buyer for any costs incurred by Buyer in connection with Station Use.

4.11 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated,

any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.12 **Interconnection Capacity**. Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity under the Interconnection Agreement during the Test Energy period and throughout the Delivery Term.

4.13 **Green-E Certification**. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Facility Energy was generated, whichever is later.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product

to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation batteries, and solar panels. Seller shall not (a) replace existing batteries in the Storage Facility unless for critical maintenance purposes or (b) increase the capacity of the Storage Facility without the prior consent of Buyer. Notwithstanding the aforementioned limitation under subclause (a), Seller may without Buyer's prior consent replace batteries in the Facility in order to maintain the Storage Contract Capacity, so long as (i) Seller provides Buyer one-hundred twenty (120) days' prior Notice, and (ii) such replacement does not increase the Storage Contract Capacity of the Facility.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission

Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) continue to provide for separate metering and a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility.

6.4 **Operating Committee and Operating Procedures**.

(g) Buyer and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility.

(h) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement to address: matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. The Operating Committee shall develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement.

(i) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that except to the extent explicitly provided for in this Agreement, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this Agreement.

ARTICLE 7
METERING

7.1 **Metering**.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility, Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall

be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Generating Facility Meter and Storage Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties is or becomes incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide

Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any

arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If

the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Except as expressly provided otherwise, each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5:00 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices sent pursuant to Article 11 (Event of Default), Article 15 (Dispute Resolution), and Article 16 (Indemnification) must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the

epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**").

(d) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event

and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly 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. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days of the Guaranteed Construction Start Date;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(vii) if, in any two consecutive Contract Years, the average Monthly Storage Availability over the two-year period is less than seventy percent (70%);

(viii) beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year;

(ix) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year;

(x) if, Seller fails to maintain an average Efficiency Rate of at least seventy percent (70%) over a rolling 12-month period;

(xi) if, Seller fails to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for more than three hundred sixty (360) days;

(xii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws on the Performance Security other than to satisfy a Termination Payment;

(xiii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(xiv) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a

single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR

LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [Type of entity], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [***limited liability company][corporate***] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall 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**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable

provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development and Supplier Diversity**. Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit S. In addition, Seller agrees to, or cause its contractors to, complete an annual supplier diversity and labor practices questionnaire provided by Buyer and, upon request of Buyer, to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

14.2 **Collateral Assignment**.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under

this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller**. Except as may be precluded by, or would cause the Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq,) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to (a) an Affiliate of Seller or (b) as part of a portfolio financing or portfolio sale of projects provided that sale is made to a Permitted Transferee and such sale is made of projects must have a combined capacity of at least 400 MW and in either case, Seller's Ultimate Parent or Affiliate must remain the operator of the Project. Seller shall provide Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment.

14.4 **Permitted Assignment by Buyer**. Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under the PPA. Buyer may make such assignment upon not less than thirty (30) days' notice by delivering a written request for such assignment in the form attached to the PPA. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 **Purchase Option**. Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator qualified and experienced

in the appraisal of facilities similar to the Facility mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties), and in either case, at Seller's sole cost) of the Facility (the "**Purchase Option**"). The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term.

14.6 **Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity**.

(a) For the duration of the Delivery Term, Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**")). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "**ROFR Offer**"), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the "**Project PPA**" or the "**PPA**") incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "**Material Terms**").

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party (the "**Third-Party Transaction**"); provided, that if such Third-Party Transaction is not consummated within twelve months of the date of the ROFR Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

Additional Project Duration. Seller agrees Buyer shall have right to add duration to the Facility. Upon request of Buyer, Seller shall provide a written proposal to Buyer to add new storage technologies to the Facility, at a price not to exceed the lesser of (i) current market prices or (ii) Seller's direct cost to add such capacity, plus ten percent (10%).

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of 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. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remediates available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees (collectively, "**Indemnifiable Losses**") arising out of or relating to or in any way connected withthe Indemnifying Party's or its Affiliates' negligence, willful misconduct or breach of the Agreement.

(b) In those circumstances in which Seller acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party against Indemnifiable Losses arising out of or relating to or in any way connected with the Indemnifying Party's or its Affiliates' (i) ownership, development, construction, operation or maintenance of the Facility, including the Site(s); (ii) breach of this Agreement or other agreements related to the

development, construction, ownership, operation or maintenance of the Facility or Site; or (iii) delivery of Energy up to and at the Delivery Point.

(c) In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer's receipt of Energy after the Delivery Point.

16.2 **Claim Notice**.

(a) **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**." A Notice of Claim will specify, in reasonable detail, the facts known to the the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

16.3 **Defense of Claims**. If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the

Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Amounts Owed**. Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.5 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (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 Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). 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.

(b) Employer's Liability Insurance. Employers' liability insurance shall not be less than One Million Dollars ($1,000,000.00) 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.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. 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.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date,

construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas,

summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies**. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The

Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

19.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[SELLER]

By: _____
Name: _____
Title: _____

EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs: (To be filled in prior to execution)

County:

CEQA Lead Agency:

Type of Generating Facility:

Operating Characteristics of Generating Facility:

Type of Storage Facility:

Energy Management Software: Remotely operable, 2-4 second timestamps, historian (at least 5 years of storage), SCADA/AGC communication and operability with the Generating Facility controller and Buyer's SC, and provides the following Applications/Modes: Frequency Response and Dynamic Voltage Support– for both Generating Facility and Storage Facility; Shifting; Regulation; Flexible Ramp; Spinning Reserve; and ITC Compliance.

Operating Characteristics of Storage Facility: +0.95/-0.95 at Installed Battery Capacity at Delivery Point; set point control +0.90/-0.90.

Operating Restrictions of Storage Facility: See Exhibit Q.

Guaranteed Capacity:

Storage Contract Capacity:

Maximum Output:

Maximum Charging Capacity:

Maximum Discharging Capacity:

Delivery Point: PNode

Facility Meter: See Exhibit R.

Storage Facility Meter Location: See Exhibit R.

PNode: [If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's point of interconnection with the CAISO Grid.]

Participating Transmission Owner:

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Major Project Development Milestones**.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract or an equipment supply agreement and a balance of plant contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. "**Major Project Development Milestone**" means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Construction Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Construction Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Construction Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestone. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when 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 H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) if Seller provides Buyer at least ninety (90) days' advance Notice that the Facility will achieve Commercial Operation before the Expected Commercial Operation Date, the date on which Commercial Operation is achieved; provided, that such earlier date of Commercial Operation shall not, absent Buyer's express written consent, occur earlier than one hundred twenty (120) days before the Expected Commercial Operation Date.

    a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

    b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

    c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within ninety **(**90) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis due to a

Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the "**Development Cure Period**"). Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period for a Force Majeure Event if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity**.

   a. *Guaranteed Capacity*. If, at Commercial Operation, the Installed Generating Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Generating Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Generating Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

   b. *Storage Contract Capacity*. If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred five percent (105%) of the Expected Energy for each Contract Year. [***If applicable, the Renewable Rate shall be subject to a Settlement Point adjustment. The "Settlement Point" shall be [pNode/NP-15]***.]

(b) Excess Contract Year Deliveries Over 105%. If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Generating Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) seventy-five percent (75%) of the Renewable Rate, but not less than $0.00/MWh. If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Generating Facility Energy or Deemed Delivered Energy.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Generating Facility Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price.

(e) Storage Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity as adjusted for the Storage Capacity Test, for such month *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

[Alternate Storage Rate Provision if Storage Rate is based on 200 Cycles per year.]

(f) Storage Rate and Tolling Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). In addition (and if applicable), if Buyer dispatches the

Storage Facility for more than 200 Cycles, Seller shall receive an additional payment equal to the Tolling Rate *multiplied by* the MWh of Discharging Energy associated with the excess Cycles *multiplied by* the Round-Trip Efficiency Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(g) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(h) PTC Amount. If applicable, for new wind resources, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the Expected Energy for such Contract Year.

(i) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(j) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term. Notwithstanding the foregoing, if after the Effective Date of the PPA, the Tax Credits are increased from the current credit amount of [*XX percent (XX%), e.g., 26% (twenty-six percent*)] or the time for start of construction is extended from the currently expected date of [*XXXX, e.g., December 31st, 2022*], Buyer shall be entitled to a credit associated with such additional benefit to Seller equal to a Renewable Rate and/or Storage Rate reduction of [XX %] or [upon the following basis: _____].

[If applicable, the Renewable Rate shall be subject to a Settlement Point adjustment. The "**Settlement Point**" shall be [*pNode/NP-15*].]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this

Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are likely to potentially affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. [Prevailing wage reports as required by Law.]

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
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AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (i) $50/MWh or (ii) the market value of Replacement Green Attributes generated by the Facility during the Performance Measurement Period, as determined by Buyer in a commercially reasonable manner.

D = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in $/MWh

"**Adjusted Energy Production**" shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after a Contract Year which ends each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority **(**"**Buyer**"**)** in accordance with the terms of that certain Renewable Power Purchase 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*], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.

4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

5. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.

6. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of each of the Generating Facility and Storage Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase 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.

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (the "**Installed PV Capacity**");

(b) The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for [two (2)][four (4)] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is __ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase 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 the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612

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 East Bay Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [email to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1999 Harrison Street, Suite 800, Oakland, CA 94612. 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]

(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 East Bay Community Energy Authority, a California joint powers authority, 1999 Harrison Street, Suite 800, Oakland, CA 94612, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of East Bay Community Energy 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 East Bay Community Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [_____] (the "**Effective Date**") by and between [_____], a [_____] ("**Guarantor**"), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

Recitals

A. Buyer and [*SELLER* ENTITY], a _____ ("**Seller**"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "**Guaranteed Amount**"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars ($_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such

failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company][corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at [____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at [____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly

as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*Signature on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: powernotices@ebce.org
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
Invoices: Attn: Phone: Email:	**Invoices:** Attn: Power Resources Phone: (510) 827-2051 Email: ap@ebce.org; powerresources@ebce.org
Scheduling: Attn: Phone: Email:	**Scheduling:** Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: powerscheduling@ebce.org
Confirmations: Attn: Phone: Email:	**Confirmations:** Attn: Power Resources Phone: (510) 361-6247 Email: powernotices@ebce.org; powersettlements@ebce.org
Payments: Attn: Phone: Email:	**Payments:** Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: AP@ebce.org
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: River City Bank ABA: 121133416 ACCT: ******7551
Credit and Collections: Attn: Phone: Email:	**Credit and Collections:** Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: powersettlements@ebce.org; powernotices@ebce.org; ap@ebce.org

[_____] ("Seller")	**EAST BAY COMMUNITY ENERGY AUTHORITY** ("Buyer")
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	**With additional Notices of an Event of Default to:** Attn: Power Resources 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email:powernotices@ebce.org; legal@ebce.org **With an additional copy to:** Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. At least twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge ramp rate;

(4) Determine the Storage Facility discharge ramp rate;

(5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("**Energy Out**");
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

(1) discharge time (minutes);

(2) charging energy (MWh);

(3) discharging energy (MWh);

(4) Stored Energy Level (MWh).

D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air temperature (°F).

E. Test Showing. Each SCT must demonstrate that the Storage Facility:

(1) successfully started;

(2) operated for at least [two (2)][four (4)] consecutive hours at Maximum Discharging Capacity;

(3) operated for at least [two (2)][four (4)] consecutive hours at Maximum Charging Capacity;

(4) has a Storage Capacity of an amount that is, at least, equal to theMaximum Stored Energy Level (as set forth in Exhibit Q); and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for [two (2)][four (4)] consecutive hours at a rate equal to the Maximum Discharging Capacity.

F. Test Conditions.

(i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The

instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

H. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

(3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

I. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test

Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first [two (2)][four (4)] hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) [two (2)][four (4)] hours), shall be divided by [two (2)][four (4)] hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

K. Adjustment to Efficiency Rate

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTCOL

A. Conditions Precedent to SCT

- Control System Functionality: The storage facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the storage facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.

- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.

- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the

battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

- The following Commercial Operation Tests will be repeated annually:
    - PMAX Capacity Test
    - Round-Trip Efficiency and Energy Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the storage facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes ("**Qualified Power Capacity**").

2. Procedure:
    i. System starting state: The storage facility will be in the on-line state with each battery subsystem at 100% usable State of Charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
    ii. Record the storage facility active power level at the Storage Facility Meter.
    iii. Command the storage facility to follow a signal equal to the storage facility's maximum operating level for five (5) minutes.
    iv. Record and store the storage facility active power response. Measurements will be made at the point of interconnection (POI) and by the control system with a recording in the storage facility historian.
    v. System end state: The storage facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The storage facility active power response and the commanded level shall be within ±2% as measured by the sum of values at the POI. The time to full output shall be less than 100 ms. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

_____

_____

C. Round-Trip Efficiency and Energy Test

1. The following test demonstrates the updated Efficiency Rate and amount of Energy required to fully charge the Storage Facility (when performed annually or ad hoc).
    i. The resulting quantity of Discharging Energy is the Energy Out (as reported in Part II.B above) and the resulting quantity Charging Energy is the Energy In (as reported in Part II.B above).
    ii. The Qualified Energy is the sum of the total quantity of Discharging Energy at the Storage Facility Meter.

2. The storage facility will be operated in both the charge and discharge directions in the following order:
    i. [Seller to specify, example language below]
    ii. *[Set each Battery Subsystem to [3%] SOC.*
    iii. *Allow each Battery Subsystem to enter background cell balancing mode by maintaining a SOC of [3% for 20 minutes]. After the background cell balancing mode begins the system can be operated as normal. Allow the cell balancing function to operate in the background for at least 24 hours to allow the automatic cell balancing procedure to reach completion. This time may be reduced based on equipment suppliers' recommendations.*
    iv. *Discharge each Battery Subsystem to 0% SOC.*
    v. *Immediately perform the Round-Trip Efficiency and Capacity Test set forth below.]*

3. To be valid, the SCT must be started within twenty-four (24) hours of the end of the period (greater than four days) during which cell balancing was completed. For the duration of the SCT, the Control System will be configured to have the power limiting mechanisms disabled, and each battery subsystem shall be configured to follow the charge and discharge current limits specified by their respective battery management system.

4. <u>Procedure:</u>
    i. System Starting State: The storage facility will be in the on-line state with each Battery Subsystem at 0% SOC.

ii. Verify that in the previous twenty-four (24) hour period, each Battery Subsystem completed the cell balancing procedure allowing full cell balancing to occur, as described in steps i-iv.
iii. Verify that ambient temperature measurements at all Battery Subsystems are between [18 °C and 28 °C] throughout this test.
iv. Record initial values of each Battery Subsystem SOC.
v. Command a real power charge that results in an AC power of facility's full charging power and continue the charge until the power is 2% different.
vi. Record and store the AC energy charged to the system as measured at the POI meter. Measurements will be made by the POI meter with recording in the storage facility historian.
vii. Within 5 minutes, command a real power discharge that results in an AC power output of the storage facility's maximum discharge power.
viii. Maintain the discharging until the power is 2% different.
ix. Record and store the AC energy discharged as measured at the facility meter. Measurements will be made by the Storage Facility Meter with recording in the storage facility historian.

Pass/Fail Criteria		
The measured Efficiency Rate is greater than or equal to the Guaranteed Round-Trip Efficiency. The Qualified Energy is greater than or equal to the Storage Contract Output.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

_____

_____

EXHIBIT P

STORAGE AVAILABILITY

Monthly Storage Availability

Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" by dividing the sum of the minimum of the Available Energy Measured (AEM) and the Available Power Measured (APM) of every hour in a given month using the formula set forth below:

Monthly Storage Availability (%) = $\frac{1}{HM-HE} * \sum_{h=1}^{HM-HE} MIN\left[\left(AEM\ (h)\right), \left(APM\ (h)\right)\right]$

where:

H_M (h) = The number of hours in the month.

H_E (h) = The number of Excused Event Hours.

AEM (h) = For any Hour (h), AEM is calculated in accordance with the following formula.

$$AEM = MIN\left[1, \frac{Available\ Energy\ (h)}{Storage\ Contract\ Output\ (h)}\right]$$

APM (h) = For any Hour (h), APM is calculated in accordance with the following formula.

$$APM = MIN\left[1, \frac{Available\ Power\ (h)}{Storage\ Contract\ Capacity\ (h)}\right]$$

Hour = The consecutive sixty-minute period commencing on the hour, every hour, using local time at the storage facility.

Available Power (h) = For any Hour (h), the average percentage of available inverters multiplied by the Qualified Power Capacity; provided, that the number of inverters corresponding to capacity in excess of the Qualified Power Capacity shall be removed from the denominator for purposes of this calculation,

Available Energy (h) = For any Hour (h), the average percentage of available racks multiplied by the Qualified Energy; provided, that the number of racks corresponding to energy storage capability in excess of the Qualified Energy shall be removed from the denominator for purposes of this calculation,

Qualified Power Capacity shall be assessed at least annually and is the PMAX value determined in the PMAX capacity test within Exhibit O.

Qualified Energy shall be assessed at least annually and is performed according to the Round-Trip Efficiency and Energy Test within Exhibit O.

Excused Event Hours means, with respect to the applicable Performance Measurement Period, the sum of all Hours during which the storage facility is operating below one hundred percent (100%) of installed capacity as result of Force Majeure EventsSystem Emergencies, or the Operating Restrictions in Exhibit O. All Excused Event Hours are removed from the calculation. Any unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 AM of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AA = 100%

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 95%, then:

AA = 100% - [(98% - Monthly Storage Availability)]

(iii) If the Monthly Storage Availability is less than 95% but greater than or equal to 70%, then:

AA = 100% - 3%- [(95% - Monthly Storage Availability) x 2]

(iv) If the Monthly Storage Availability is less than 70%, then:

AA = 0

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

1. XXXX
2. XXXX

SAMPLE OPERATING RESTRICTIONS

Maximum Stored Energy Level:	[XX] MWh [number in MWh representing maximum amount of energy that may be charged to the Storage Facility]
Minimum Stored Energy Level:	[XX] MWh [number in MWh representing the lowest level to which the Storage Facility may be discharged]
Maximum Charging Capacity:	[XX] MW [number in MW representing the highest level to which the Storage Facility may be charged]
Minimum Charging Capacity:	[XX] MW [number in MW representing the lowest level at which the Storage Facility may be charged]
Maximum Discharging Capacity:	[XX] MW [number in MW representing the highest level at which the Storage Facility may be discharged]
Minimum Discharging Capacity:	[XX] MW [number in MW representing the lowest level at which the Storage Facility may be discharged]
Maximum State of Charge (SOC) during Charging:	[100]%
Minimum State of Charge (SOC) during Discharging:	[0]%
Ramp Rate:	The Storage Facility shall have the ability to discharge at the Maximum Discharging Capacity in two seconds.

Annual Cycles:	Maximum of 365 Full Cycle Equivalents per Contract Year with no monthly cap.
Daily Dispatch Limits:	Charging: [2 per day] Discharging: [2 per day] Partial Charging/Discharging: [maximum number of times per day Buyer may begin charging or discharging the Storage Facility without reaching either the Maximum SOC or Minimum SOC, respectively]
Maximum Time at Minimum Stored Energy Level:	[Seller-specified, if applicable]
Other Operating Limits:	1. Storage Facility to be charged only from the Generating Facility. 2. The average resting state of charge per Contract Year must be below fifty percent (50%).
Ancillary Services Capability:	[Seller-specified, if applicable]

EXHIBIT R

METERING DIAGRAM

EXHIBIT S

WORKFORCE DEVELOPMENT

CAC Item C6
Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer & Treasurer

SUBJECT: **Treasurer's Report (Informational Item)**

DATE: July 21, 2021

Recommendation

Receive report on EBCE cash position.

Background and Discussion

For quarter ending June 30, 2021, EBCE has maintained a positive cash balance on all EBCE bank accounts. Below is a summary of account balances, cash received, and outstanding loan balances.

Account Balances as of 6/30/2021

Account	Amount	
Internal Operating	$	1,453,104
Operating Fund	$	28,406,988
Lockbox (Includes $3,000,000 reserve)	$	10,375,882
Operating Reserve Fund	$	41,050,034
Money Market	$	1,005,027
Insured Cash Sweep	$	73,250,263
SubTotal	$	155,541,298

Cash Received by Month into Lockbox Account

April	2021	$	25,837,014
May	2021	$	24,217,176
June	2021	$	29,113,618
Total		$	79,167,808

Outstanding Loan Balances:
Barclays Credit Facility: $0.00

Customer Delinquency:
As of July 6, 2020

30 – 60 Days:	$2,313,267
60 – 90 Days:	$2,018,152
90 - 120 Days:	$1,712,966
120+ Days:	$16,709,240

More recent data has not yet been provided by PG&E and billing vendor on the date this report was generated.

CAC Item C7

Staff Report Item 16

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer

SUBJECT: **Prepay Transaction Review & Request for Approval (Action Item)**

DATE: July 21, 2021

Recommendation

Adopt a Resolution authorizing the execution of a Power Supply Contract and certain other documents to enable EBCE to enter into a 30-year energy prepayment transaction.

Background and Discussion

As has been discussed now at Board and Board Committee meetings over the past year, an energy prepayment – or 'prepay' – is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity. This prepay structure has historically been utilized for natural gas procurement and is now being applied towards renewable energy. EBCE and Silicon Valley Clean Energy (SVCE) have jointly prepared a prepay transaction, and a number of other CCAs are also in the process of initiating a similar structure.

Prepay Process:
Utilizing the municipal bond market, a tax-exempt Load Serving Entity (LSE, also called "Prepay Buyer") and a taxable financial counterparty (bank, called "Prepay Supplier") enter into a 30-year agreement through which the LSE assigns existing power supply contracts (or power purchase agreements, "PPA") to the Prepay Supplier. The Prepay Supplier pays the contract price to the PPA provider, while the LSE pays the Prepay Supplier at a discounted rate. The discounted rate is agreed upon in the prepay documents and is based in part on the spread between the taxable and tax-exempt bond interest rates. The market availability of this interest rate spread is critical to the savings opportunity available to the LSE.

Tax-exempt bonds are issued by a third-party conduit to raise funds for the prepay transaction. The funds flow from the Issuer to the Prepay Supplier. The LSE does a limited assignment of one or more of their PPAs to the Prepay Supplier. The LSE is required to continue to perform under the contract, while maintaining rights to the electricity and

attributes under the PPA. The Prepay Supplier utilizes the bond funds and provides a discount on the PPA to the LSE based on the spread between the taxable and tax-exempt rates. The discount is historically estimated at 8-12% but is subject to change based on market conditions at bond re-issuance. For this prepay, the initial discount target is 10% and the minimum discount will likely be set around 6-7%. There is a negotiated minimum discount that, if not met by the Prepay Supplier, allows the LSE a walkaway right.

The total combined notional value of the assigned contracts flowing through the prepay over the 30 years will be no greater than $1.5bn; these contracts can be long-term renewables PPAs or commodity supply contracts. While the contracts are assigned to the Prepay Supplier, the LSE continues to ultimately take and pay for all the energy and attributes delivered through the contract; all other terms of the PPA remain unchanged. If the prepay program terminates early for any reason – either the Prepay Supplier or the LSE fail to perform – the LSE forgoes future savings and the assigned PPA is put back completely to the LSE.

Prepay Parties:
The prepay transaction requires the selection and involvement of multiple parties. Names and functions are as follows:

Prepay Buyer: East Bay Community Energy and Silicon Valley Clean Energy, jointly
- Role: Provide energy contracts to flow through prepay and receive discount

Prepay Supplier: Morgan Stanley
- Role: Structure transaction and pay contract price to PPA provider
- Selection Process: via solicitation issued by EBCE and SVCE in November 2019

Municipal Advisor: PFM
- Role: Advise Prepay Buyer in negotiations; required by Municipal Securities Rulemaking Board (MSRB)
- Selection Process: via solicitation issued by EBCE and SVCE in September 2020

Bond Counsel: Orrick, Herrington & Sutcliffe
- Role: Represent bondholders
- Selection Process: via solicitation issued by EBCE and SVCE in June 2020

Tax Counsel: Orrick, Herrington & Sutcliffe
- Role: Provide tax opinion on transaction
- Selection Process: via solicitation issued by EBCE and SVCE in June 2020

Issuer's Counsel: Chapman and Cutler LLP
- Role: Represent issuer's interests, supporting drafting and negotiating terms of prepay agreement and associated energy supply agreements
- Selection Process: via solicitation issued by EBCE and SVCE in June 2020

Disclosure Counsel: Chapman and Cutler LLP
- Role: Prepare Official Statement
- Selection Process: via solicitation issued by EBCE and SVCE in June 2020

Bond Issuer: California Community Choice Financing Authority (CCCFA)
- Role: Issue municipal bonds for prepay
- Selection Process: via JPA formation - EBCE membership approved April 2021, executed June 2021

Custodian: *Final selection in process*
- Role: Manage the Issuer Payments Account

- Selection Process: via solicitation issued by PFM in July 2021

Commodity Swap Counterparty: *Final selection in process*
- Role: Provide financial commodity swap when transaction moves from fixed to floating
- Selection Process: via solicitation issued by Morgan Stanley in June 2021

Credit Rating Agency: TBD
- Role: Rate the bonds
- Selection Process: Discussions in process

Prepay Documents:
The prepay transaction requires the preparation of numerous documents. Below are the key documents (all included as attachments to this item):

Power Supply Contract
- Function: Sets forth terms for which CCA receives energy for 30-year term
- Signed by: **EBCE** and Issuer (CCCFA)

Letter Agreement Regarding PPA Assignments
- Function: Details the terms of the limited assignment of PPAs between EBCE and third-party energy sellers
- Signed by: **EBCE** and Prepay Supplier (Morgan Stanley)

Form of Limited Assignment
- Function: Signed for each PPA assigned into prepay; Exhibit to "Letter Agreement Regarding PPA Assignments"
- Signed by: **EBCE**, Original PPA Counterparty, and Prepay Supplier (Morgan Stanley)

Project Administration Agreement
- Function: Sets out terms for CCA to act on behalf of the Issuer and coordination among the two CCAs
- Signed by: **EBCE**, SVCE, and Issuer (CCCFA)

PPA Payments Custodial Agreement
- Function: Details cash flows between PPA Buyer (CCA), Prepay Supplier, and Custodian
- Signed by: **EBCE**, Prepay Supplier (Morgan Stanley), and custodian

Trust Indenture
- Function: Sets forth terms of bond issuance and rights of bondholders
- Signed by: Issuer (CCCFA) and trustee (TBD)

Prepaid Agreement
- Function: Details the flow of power and payments between the Prepay Supplier and the Issuer
- Signed by: Issuer (CCCFA) and Prepay Supplier (Morgan Stanley)

Re-pricing Agreement
- Function: Sets forth terms for remarketing and repricing for future bond repricing periods
- Signed by: Issuer (CCCFA) and Prepay Supplier (Morgan Stanley)

Preliminary Offering Statement (POS)
- Function: Details parties (including appendix of info on CCAs operational history), transaction size and key terms; used to market the bonds
- Signed by: *Not a signed document*

Details of Requested Board Approval

Adopt the Resolution which authorizes EBCE to sign:

- Power Supply Contract with CCCFA (Issuer)
- Letter Agreement Regarding PPA Assignments with Morgan Stanley (Prepay Supplier)
- Limited Assignment Agreements with Morgan Stanley (Prepay Supplier) and future PPA sellers
- Project Administration Agreement with SVCE and CCCFA (Issuer)
- PPA Payments Custodial Agreement with Morgan Stanley and the Custodian bank

The adoption of the Resolution and the execution of the above documents by the EBCE board would enable EBCE to then seek approval for the transaction by the CCCFA board, further enabling the municipal bond raise required to initiate the prepay and start receiving a discount. The approvals provided shall be subject to the following parameters:

(a) the Bonds will not be obligations of EBCE, 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 EBCE under the Power Supply Contract;

(b) the aggregate principal amount of the Bonds shall not exceed $1,250,000,000

(c) the annual energy savings to EBCE under the Power Supply Contract shall be at least $3.00 per MWh

Financial Impact

The purpose of pursuing the prepay transaction is to achieve meaningful energy procurement cost savings. This initial transaction is being split between SVCE and EBCE and will amount to approximately $12-16MM of annual procurement costs running through the prepay; targeting a 10% discount, this translates to $1.2-1.6MM of annual savings for each CCA.

The fees paid to all of the various parties involved in the prepay will all be payable from the proceeds of the prepay bonds. That is to say, there is no out-of-pocket cost to EBCE; the cost will be paid out of the savings realized from the prepay transaction. Further, that cost will be split between EBCE and SVCE.

Additionally, it is important to note that the prepay is non-recourse to EBCE. The ultimate counterparty with the Prepay Supplier is the CCCFA JPA, so CCCFA is therefore the counterparty to all the underlying agreements. CCCFA is a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of EBCE or any representative of EBCE serving on the governing body of EBCE.

Attachments

A. Resolution
B. Presentation
C. Power Supply Contract
D. Letter Agreement Regarding PPA Assignments
E. Form of Limited Assignment
F. Project Administration Agreement

G. PPA Payments Custodial Agreement
H. Trust Indenture
I. Prepaid Agreement
J. Re-pricing Agreement
K. Preliminary Offering Statement

RESOLUTION 2021-[__]

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS, SERIES 2021B; AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.* (the "Act"), among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020;

WHEREAS, pursuant to the provisions of the Act, EBCE and certain other California "community choice aggregators" entered into a joint powers agreement (the "Joint Powers Agreement") pursuant to which the California Community Choice Financing Authority (the "Issuer") was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist EBCE 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, EBCE have determined that it is desireable to acquire a long-term supply of clean energy from the Issuer;

WHEREAS, EBCE 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 EBCE, as described herein;

WHEREAS, EBCE is requesting that the Issuer finance the costs of the Project with the proceeds of its Clean Energy Project Revenue Bonds, Series 2021B (the "Bonds");

WHEREAS, EBCE has determined to authorize the officers of EBCE 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 EBCE for approval forms of the following agreements to which EBCE is a party (collectively, the "EBCE Documents"):

1. Power Supply Contract between EBCE and the Issuer;

2. Custodial Agreement by and among EBCE, Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG"), the Prepaid Supplier, the Issuer and the custodian to be named therein;

3. Form of Limited Assignment Agreement, by and among EBCE, the counterparty to the power purchase agreement described therein, and MSCG;

4. Letter Agreement among EBCE, the Prepaid Supplier and MSCG regarding matters relating to Assignment Agreements; and

5. Prepaid Energy Project Administration Agreement, by and among EBCE, Silicon Valley Clean Energy Authority and the Issuer; and

WHEREAS, there have also been made available to the Board of Directors of EBCE 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 EBCE 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 EBCE included in Appendix A thereto (the Indenture, the Prepaid Agreement, the Re-pricing Agreement

and the Preliminary Official Statement, together with the EBCE Documents, the "Project Documents");

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The proposed forms of the EBCE 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 EBCE 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 EBCE Documents hereby approved. Subject to the parameters set forth in Section 4 of this Resolution, any of the Chief Executive Officer, Chief Operations Officer, or Chair of the Board (each an "Authorized Officer") is hereby authorized and directed, for and on behalf of EBCE, to execute and deliver the EBCE 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 EBCE, to execute and deliver a certificate as to the information regarding EBCE 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, EBCE hereby authorizes the distribution of the Preliminary Official Statement, with additional updates from this form, 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 EBCE, 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 EBCE has approved in this Resolution, for the

issuance, sale and delivery of the Bonds, and to consummate by EBCE the transactions contemplated by the EBCE Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 4. The approvals provided for herein shall be subject to the following parameters:

(a) the Bonds will not be obligations of EBCE, 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 EBCE under the Power Supply Contract;

(b) the aggregate principal amount of the Bonds shall not exceed $1,250,000,000; and

(b) the annual energy savings to EBCE under the Power Supply Contract shall be at least $3.00 per MWh.

Section 5. Execution and delivery of the EBCE 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 EBCE 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 EBCE. 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 EBCE.

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 EBCE 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 EBCE Board of Directors on this 21st day of July, 2021

_____
Dianne Martinez, Chair

Attest:

_____
Adrian Bankhead, Clerk of the Board

JULY 21, 2021

Prepay Transaction Request for Approval

EAST BAY COMMUNITY ENERGY

Presentation Order

1. Prepay Structure Overview
2. List of Parties
3. List of Key Documents
4. Key Risks
5. Timeline
6. Overview of Requested Board Approval

Prepay Overview

An energy prepayment is a long-term non-recourse financial transaction between a tax-exempt Load Serving Entity (LSE) and a taxable financial counterparty (bank, called “Prepay Supplier") utilizing the municipal bond market.

- Municipal utilities (and tax-exempt entities such as CCAs) in the US can prepay for a supply of electricity or natural gas from a taxable entity and fund that prepayment with tax-exempt municipal bonds.
- The LSE must sell the commodity to their retail end-users residing within their traditional service area.
- This structure is well known and regularly used for gas and is now being applied towards renewables PPAs. Codified in US Tax Law. Since first prepayments of natural gas were done in the early 1990s, the IRS issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327)

Structure:

- Term: Typically 30-year term with repricing periods every 5-10 years due to the optimal taxable vs. tax-exempt spreads
- Transacting Parties:
  1. Tax-exempt Load Serving Entity (LSE, also called “Prepay Buyer”) – EBCE & SVCE
  2. Taxable financial counterparty (bank, called “Prepay Supplier”) - Morgan Stanley
- Process:
  1. LSE enters into a 30-year power supply arrangement
  2. Prepay Supplier is assigned the existing energy supply contract(s) held by LSE through a limited assignment agreement
  3. Municipal bonds issued by a conduit, amounting to combined notional value of assigned contracts
  4. Prepay Supplier pays the contract price to PPA Seller, immediately transferring all electricity and attributes to LSE
  5. LSE pays the Prepay Supplier at discounted rate, achieving procurement cost savings
- Takeaway: Prepay Supplier is effectively the energy supplier and is prepaid for future energy deliveries. The Prepay Supplier holds and utilizes capital and provides a discount to the Prepay Buyer that is enabled via the spread between the taxable and tax-exempt borrowing costs.

EAST BAY COMMUNITY ENERGY

Key Elements of a Prepay Transaction

Power Contract Assignment:

- Existing renewable PPAs are assigned to the taxable Prepay Supplier. The LSE continues to ***take and pay*** for energy and attributes delivered through the contract at a discount.
- The assignment is a limited assignment of rights and energy products whereby the LSE continues to serve as scheduling coordinator to the extent applicable and all operational requirements continue to remain.
- All other terms of the PPA are unchanged.
- If the prepay program terminates early, Prepay Supplier fails to perform, or LSE fails to perform, the LSE forgoes the future savings and the assigned PPA contract is put back to the original LSE.

Debt:

- Non-Recourse: Prepays utilize non-recourse municipal bonds and are ***not*** secured or guaranteed by the referenced entity (i.e. the CCA). Rather the debt is recourse to the Prepay Supplier. This significantly protects the CCA and mitigates risk related to the payment of power contracts novated through the prepay.
- Off Balance Sheet for LSE: Bonds are issued by a municipal bond conduit.

Prepay Sizing and Discount

- The total bond proceeds may be as high as $1.5bn and will be dependent on the CA bond market appetite.
  - EBCE will seek the maximum bond raise while maintaining optimal bond rates
  - The amount represents the present value of the PPA cashflows over the 30-year life of the transaction
- This initial transaction is being split between SVCE and EBCE and will amount to approximately $12-16MM of annual procurement costs running through the prepay transaction and translate to $1.2-1.6MM of annual savings for each CCA.
  - The transaction assumes an increase in the cashflows running through the prepay over the 30-year life reaching $20-25MM in annual procurement costs running through the prepay by the end of the transaction.
  - As the transaction moves forward, the arbitrage value goes down since the present value benefits reduce with a shorter remaining tenor. The future discount rates will be reset every 5-10 years and be dependent on future bond market conditions, but this puts downward pressure on the future discounts.
  - There is a negotiated minimum discount that, if not met by the Prepay Supplier, allows the LSE not to move forward in the repricing.
- Ultimately the discount is established by the spread between taxable and tax-exempt rates and deducts all transaction related costs, which include fees associated with bond underwriting, counsel (bond, disclosure, underwriter's, prepay), financial adviser, swap counterparty, credit rating, custodian, etc.
- 5-10 years is the optimal bond spread tenor currently. Maintaining this spread over a 30-year transaction life maximizes the available discount. This requires a repricing and re-issuance of bonds every 5-10 years and a reset of the discount rate. In general, a high interest rate environment will lead to a higher discount.

EBCE Prepay Parties

Joint Prepay Buyer: Silicon Valley Clean Energy
- Issued original RFP together and have prepared a joint transaction in which both CCAs assign contracts, share costs, benefits

Prepay Supplier: Morgan Stanley
- Selected through solicitation issued November 2019

Municipal Financial Advisor: PFM
- Selected through solicitation issued September 2020

Counsel: Orrick, Herrington & Sutcliffe (Bond & Tax Counsel) | Chapman & Cutler LLP (Disclosure & Issuer's Counsel)
- Both firms selected through solicitation issued June 2020

Bond Issuer: California Community Choice Financing Authority
- EBCE membership approved by Board in April 2021, JPA formed June 2021; Founding Members are EBCE, MCE, SVCE, 3CE

Custodian: TBD
- PFM issued solicitation early July 2021; final selection in process

Commodity Swap Counterparty: TBD
- PFM issued solicitation early July 2021; final selection in process

Credit Rating Agency: TBD
- Discussions in process

Documents Overview: EBCE Signs

1. Power Supply Contract
   - Sets forth terms for which CCA receives energy for 30-year term
   - Signed by EBCE and the Issuer
2. Letter Agreement Regarding PPA Assignments
   - Details the terms of the limited assignment of PPAs between EBCE and 3rd party energy sellers
   - Signed by EBCE and Morgan Stanley (Prepay Supplier)
3. Form of Limited Assignment
   - Details the terms of the limited assignment of each energy PPA EBCE assigns into prepay
   - Signed by EBCE, the original PPA counterparty, and Morgan Stanley (Prepay Supplier)
4. Project Administration Agreement
   - Sets out terms for CCA to act on behalf of the Issuer and coordination among the two CCAs (EBCE and SVCE)
   - Signed by EBCE, SVCE, and CCCFA (conduit issuer JPA)
5. PPA Payments Custodial Agreement
   - Details cash flows between PPA Buyer (CCA), Prepay Supplier, and Custodian
   - Signed by EBCE, Morgan Stanley, and Custodian bank – likely to be filled by the trustee, which will be contracted by the Issuer

Documents Overview: CCCFA Signs

1. Prepaid Agreement
   - Details the flow of power and payments between the Prepay Supplier and the Issuer (CCCFA)
   - Terms are largely mirrored in the Power Supply Contract
2. Re-pricing Agreement
   - Sets forth terms for remarketing and repricing for future bond repricing periods
3. Trust Indenture
   - Sets forth terms of bond issuance and rights of bondholders
   - Details that all revenues relevant to transaction flow to and through conduit issuer (CCCFA)
4. Commodity Swap documents
   - Docs pursuant to which the commodity price is hedged with a 3rd-party swap counterparty (to insulate transaction from market variations)
   - May be dormant for initial bond period if initiated with a fixed price contract, but turns on when transaction moves from fixed to floating
5. Parent Guarantee
   - Guarantee of “due and punctual payment” from Prepay Supplier to conduit issuer (CCCFA)
   - Flows in favor of conduit issuer and swap counterparty, respectively
6. Front-End Custodial Agreement
   - Outlines payment flows through the transaction, signed by CCCFA, Custodian, and Bond Trustee
   - *Also a Back-End Custodial Agreement which is signed by Morgan Stanley, Custodian, and Bond Trustee*

Documents Overview: Other

Attachment Staff Report Item 16B

1. Preliminary Offering Statement (POS)
   - Official offering document used to market the bonds
   - Details parties (including appendix of info on CCAs operational history), transaction size and key terms
   - Not a signed document

Key Risks

- If this transaction does not materialize: Loss of out-of-pocket costs $25-50k and staff time
  - Consultants all contingent on successful deal
  - Consultants are primarily paid from deal proceeds vs. EBCE directly
- Opportunity cost of higher savings through a prepay transaction or alternative structure initiated at a different time.
  - To the extent that MS does not provide the minimum discount EBCE will have a right not to proceed in future repricing periods. Minimum discount will likely be set at around 6-7%. Target initial discount is 10%.
  - EBCE also has a right to shop the prepay provider if we view that the offered discounts are not at market
- Load loss or inability to assign a PPA into the prepay due to contractual limitations would likely lead to remediation or remarketing activities and potentially result in the loss of the discount.
  - Note that costs would not increase above contractual levels
- Regulatory risks, such as reclassifying a long-term PPA as a short-term PPA making it ineligible for SB350 qualification or disruption to PCC1 bundled classification due to the assignment of PPA
- Political risk associated with a transaction collapsing due to non-compliance to tax codes

Benefits

- Savings over the 30-year term expected to be 8-12% per year on power quantities delivered under the prepay structure compared to spot market purchases / current contracts. Discount rates may fluctuate up or down in future years.
- EBCE can continue to enter into similar transactions in future years to increase procurement cost savings. It is foreseeable that EBCE enters into 5-10 prepay transactions to achieve annual savings of $10-20MM. The limitations are based on the bond market investor appetite, market conditions with meaningful taxable and tax-exempt spreads, and the available headroom to ensure that EBCE will have the procurement related costs to safely assign in for a 30-year transaction life.
- Favorable risk allocation where EBCE only pays for energy that is delivered (same as contracts today)
- Debt is non-recourse to EBCE
- Rating agencies comfortable with comparable deals at SMUD, SCPPA, others

Timeline / Plan

Transaction Board Approval:

- Requesting board approval in July
- SVCE, co-participant, in this Prepay transaction is seeking board approval in August (board is on recess in July)
- CCCFA (Issuer/conduit) will approve relevant documents in July or August board meeting
- Note that EBCE may move forward on the transaction to the extent that SVCE elects not to move forward or is delayed. MCE is currently moving forward on a separate prepay transaction and will likely precede our transaction to the market

Bond raise and initiation of prepay:

- Targeting an August/September bond raise, but may be later based on completing documentation and market conditions. It is possible that we may pursue multiple prepay transactions and request approval from the board for a second prepay transaction in 2-3 months if market conditions are favorable.

Factors That May Impact Timing:

- Markets: Taxable vs. tax-exempt spreads have improved in 2021, moving in the direction to achieve discounts we are seeking. A negative change in market conditions could delay timeline of deal execution and we are currently seeing volatility.
- Assignment Consents: Finalizing the initial commodity transaction for assignment.

EAST BAY COMMUNITY ENERGY

Requested Approval

- Adopt the Resolution which authorizes EBCE to:
  - Sign **Power Supply Contract** with CCCFA (Issuer)
  - Sign **Letter Agreement Regarding PPA Assignments** with Morgan Stanley (Prepay Supplier)
  - Sign **Limited Assignment Agreements** with Morgan Stanley (Prepay Supplier) and future PPA sellers
  - Sign **Project Administration Agreement** with SVCE and CCCFA (Issuer)
  - Sign **PPA Payments Custodial Agreement** with Morgan Stanley and the Custodian bank
- The adoption of the Resolution and the execution of the above documents by the EBCE board would enable EBCE to then seek approval for the transaction by the CCCFA board, further enabling the municipal bond raise required to initiate the prepay and start receiving a discount.
- The approvals provided shall be subject to the following parameters:

a) the Bonds will not be obligations of EBCE, 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 EBCE under the Power Supply Contract;

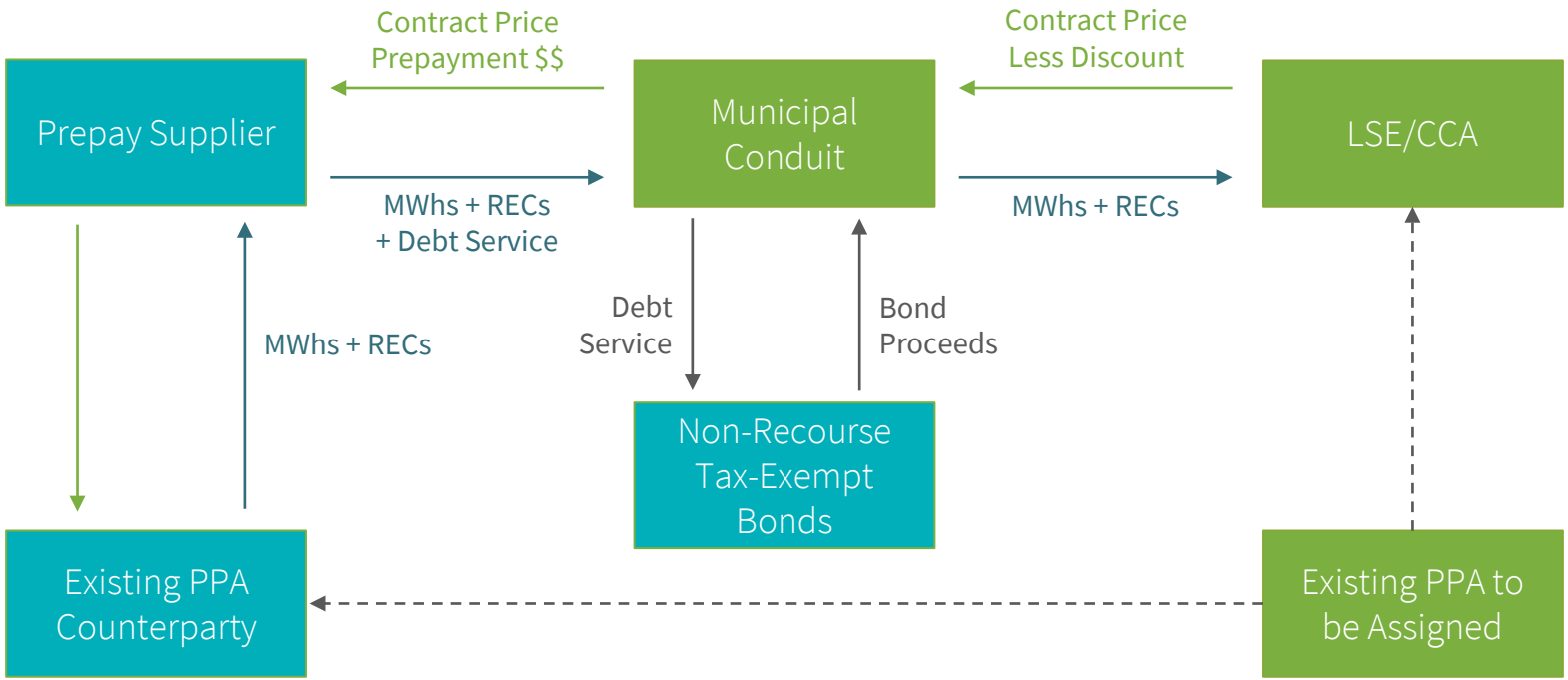
b) the aggregate principal amount of the Bonds shall not exceed $1,250,000,000; and

c) the annual energy savings to EBCE under the Power Supply Contract shall be at least $3.00 per MWh.

Appendix

EAST BAY COMMUNITY ENERGY

Prepay Structure



Market Statistics

- Nationwide: 90+ municipal transactions
  - $50+ Billion combined notional contract value
- California: 11 municipal transactions
  - $5.7 Billion combined notional contract value
- Active Suppliers: Morgan Stanley, Goldman Sachs, Royal Bank of Canada, Citi, TD Securities
  - All investment grade rated financial institutions
- Resource Types:
  - Majority of transactions to date have been exclusively for natural gas, remainder including an electricity 'switch' at a certain year.
  - The same tax law and similar transaction structure enables the program for electricity from renewables contracts, as well. The market is seeing activity and preparation for these transactions, particularly from CCAs.

POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

[CCA]

Dated as of [____], 2021

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Exhibits

POWER SUPPLY CONTRACT

This Power Supply Contract (hereinafter "Agreement") is made and entered into as of [____], 2021 (the "Execution Date"), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("Issuer") and [Participant], a community choice aggregator organized under the Laws of the State of California ("Purchaser").

W I T N E S S E T H:

WHEREAS, Issuer has planned and developed a project to acquire long-term Energy supplies from Morgan Stanley Energy Structuring, L.L.C. ("MSES") pursuant to a Prepaid Energy Sales Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Prepaid Agreement") to meet a portion of the Energy supply requirements of Purchaser through an energy prepayment project (the "Energy Project"); and

WHEREAS, Issuer will finance the prepayment under the Prepaid Agreement, and the other costs of, the Energy Project by issuing the Bonds; and

WHEREAS, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code with authority to sell electricity to retail electric consumers within its service area; and

WHEREAS, Purchaser is agreeable to purchasing a portion of its Energy requirements from Issuer under the terms and conditions set forth in this Agreement and Issuer is agreeable to selling to Purchaser such supplies of Energy under the terms and conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser has assigned to [MSCG]/[MSES] certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be delivered to Issuer under the Prepaid Agreement and then resold by Issuer hereunder; and

WHEREAS, as a condition precedent to the effectiveness of the Parties' obligations under this Agreement, Issuer shall have entered into the Prepaid Agreement and shall have issued the Bonds.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency

of which are hereby acknowledged, Issuer and Purchaser (the "Parties" hereto; each is a "Party") agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

"Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

"Annual Refund" means the annual refund, if any, provided to Purchaser and calculated pursuant to the procedures specified in Section 3.2(c).

"Applicable Rating Agencies" means, at any given time, each Rating Agency then rating the Bonds.

"Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.

"Assigned Energy" has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

"Assigned Fixed Price" means $[___]/MWh.

"Assigned Product" means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

"Assigned RECs" means any RECs to be delivered to MSCG or MSES pursuant to any Assigned Rights and Obligations.

"Assigned Rights and Obligations" means a portion of Purchaser's rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"Assignment Letter Agreement" means that certain Letter Agreement, dated as of the date hereof, by and among 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 with its service area.

"Claiming Party" has the meaning specified in Section 11.1.

"Claims" means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"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, the weighted average Day-Ahead Market Price for each Month during the applicable EPS Energy Period, with such weighted average calculated in accordance with the weighting set forth in Exhibit A-3; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh.

"Day-Ahead Market Price" means The Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Day-Ahead Market Price hereunder be less than $0.00/MWh.

"Default Rate" means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the "Money Rates" section as the "Prime Rate" for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

"Delivery Hours" means each Hour beginning at [___] CPT on the first day of the Delivery Period and ending at the end of the last Hour in the Delivery Period.

"Delivery Period" means the period beginning on [____], 2021 and ending on [____], 20[____]; provided that the Delivery Period shall end immediately upon the effective termination date of the Prepaid Agreement or early termination of this Agreement pursuant to Article XVII hereof.

"Delivery Point" means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

"Energy Delivery Point" has the meaning specified in Exhibit A-1.

"Energy Project" has the meaning specified in the recitals.

"EPS" means California's Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

"EPS Compliant Energy" means Energy that Purchaser can contract for and purchase in compliance with EPS requirements that are applicable to Purchaser.

"EPS Energy Period" means the Initial EPS Energy Period and any subsequent EPS Energy Period established by a future assignment of a power purchase agreement consistent with the Assignment Letter Agreement.

"Execution Date" has the meaning specified in the preamble.

"Federal Tax Certificate" means the executed Federal Tax Certificate delivered by Purchaser in the form attached as Exhibit D.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Firm (LD)" means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability

only to the extent that, and for the period during which, such performance is prevented by Force Majeure.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Purchaser's markets; (ii) Purchaser's inability economically to use or resell the Energy purchased hereunder; (iii) the loss or failure of Issuer's supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Issuer's ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (b) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; *provided*, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) any invocation of Force Majeure by MSES under the Prepaid Agreement shall constitute Force Majeure in respect of Issuer hereunder; (II) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of Issuer hereunder; and (III) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Issuer until the earlier of (A) the commencement of an "Assignment Period" under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

"Government Agency" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"Hour" means each 60-minute period commencing at [___] CPT during the Delivery Period. The term "Hourly" shall be construed accordingly.

"Hourly Quantity" means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

"Initial Assigned PPA" means that certain [Power Supply Agreement], dated as of [____], between the Initial PPA Supplier and Purchaser. **[NOTE: This definition and others**

relating to the initial PPA assignment will be changed to plural to the extent that there are multiple PPA assignments at the outset.]

"Initial Assignment Agreement" means that certain Partial Assignment Agreement, dated as of the date hereof, by and among Purchaser, [MSES/MSCG][1] and the Initial PPA Supplier.

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

"Initial PPA Supplier" means [____].

"Initial Reset Period" means the period beginning on [____], 2021 and ending on [____], 20[____].

["Interest Rate Period" has the meaning specified in the Bond Indenture.]

"Issuer" has the meaning specified in the preamble.

"Issuer Default" has the meaning specified in Section 17.1.

"Law" means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

"Long-Term PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, MSES or any successors thereto pursuant to any Assigned Rights and Obligations.

"Minimum Discount" means [__] cents per MWh for the Initial Rate Period and thereafter no less than [__] cents per MWh. Both amounts are inclusive of any projected Annual Refund.

"Month" means, during the Delivery Period, a calendar month. The term "Monthly" shall be construed accordingly.

"Monthly Discount" means (i) for the Initial Reset Period, an amount (when taken together with any Annual Refund) that is not less than the Minimum Discount and is specified in Exhibit F, which Exhibit F shall be provided by Issuer to Purchaser on the Bond Closing Date, and (ii) for each subsequent Reset Period, a portion of the Available Discount for such Reset Period determined by the Calculation Agent pursuant to the Re-Pricing Agreement and set forth in an updated Exhibit F provided by Issuer after such determination.

[1] NTD: MSES will be party to the assignment agreement if MSCG is the Initial PPA Supplier, but MSCG will be party to the assignment agreement to the extent the Initial PPA Supplier is an unrelated third party.

"Monthly Quantity" means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

"MSCG" means Morgan Stanley Capital Group Inc., a Delaware corporation.

"MSES" has the meaning specified in the recitals.

"Municipal Utility" means any Person that (a)(i) is a "governmental person" as defined in the implementing regulations under Section 141 of the Code and any successor provision and owns a natural gas or electric distribution utility (or provides Energy at wholesale to, or that is sold to entities that provide natural gas or Energy at wholesale to, governmental Persons that own such utilities) or (ii) is a community choice aggregator organized under the Laws of the State of California, and (b) agrees in writing to use the Energy purchased by it (or cause such as to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

"MWh" means megawatt-hour.

"Non-Priority Energy" means Energy that is not Priority Energy.

"Party" has the meaning specified in the recitals.

"PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, MSES or any successors thereto pursuant to any Assigned Rights and Obligations.

"Person" means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

"Portfolio Content Category 1" means any Renewable Energy Credit associated with the generation of electricity from an "Eligible Renewable Energy Resource" consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Potential Remarketing Event" has the meaning specified in Section 3.4(b).

"PPA Supplier" means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the terms of the Assignment Letter Agreement.

"PPT" means Pacific Daylight Time when such time is applicable and otherwise means Pacific Standard Time.

"Prepaid Administrative Fee" means $[0.50] per MWh.

"Prepaid Agreement" has the meaning specified in the recitals.

"Priority Energy" means the Contract Quantity to be purchased by Purchaser under this Agreement, together with Energy that Purchaser is obligated to take under a long-term agreement, which Energy either (i) has been purchased by Purchaser or a joint action agency in a prepayment transaction using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes, or (ii) is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes (provided that, with respect to clause (ii), Priority Energy shall not include Energy that is generated using capacity that was wholly or partially financed through the monetization of renewable tax credits, whether such monetization is accomplished through a tax equity investment or otherwise, or that is generated from federally owned and operated hydroelectric facilities, including through the United States Army Corps of Engineers and the United States Bureau of Reclamation, and marketed by the Bonneville Power Administration or the Western Area Power Administration).

"Project Administration Fee" means the monthly fee payable by Purchaser as described in Section 3.2(b).

["Project Participant" has the meaning specified in the Bond Indenture.]

"Purchaser" has the meaning specified in the preamble.

"Purchaser Default" has the meaning specified in Section 17.2.

"Purchaser's Statement" has the meaning specified in Section 14.1(a).

"Qualifying Use Requirements" means, with respect to any Energy delivered under this Agreement, such Energy is used (i) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

["Rating Agency" has the meaning specified in the Bond Indenture.]

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Issuer and MSES.

"Real-Time Market Price" means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Real-Time Market Price hereunder be less than $0.00/MWh.

"Remarketing Election Deadline" means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice, which shall be 4:00 p.m. PPT on the 10th day of the Month (or, if such day is not a Business Day, the next succeeding Business Day) prior to the first delivery Month of a Reset Period with respect to which a Potential Remarketing Event has occurred.

"Remarketing Election Notice" has the meaning specified in Section 3.4(b).

"Renewable Energy Credit" or "REC" has the meaning specified for "Renewable Energy Credit" in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"Reset Period" means each ["Reset Period" under the Re-Pricing Agreement.]

"Reset Period Notice" has the meaning specified in Section 3.4(a).

"Schedule", "Scheduled" or "Scheduling" means the actions of Issuer, Purchaser and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"Transmission Provider(s)" means any entity or entities transmitting or transporting Energy on behalf of Issuer or Purchaser to or from the Delivery Point.

"Trustee" means [____], and its successors as Trustee under the Bond Indenture.

"Voided Remarketing Election Notice" has the meaning specified in Section 3.4(b).

"WREGIS" means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to "Articles," "Sections," "Schedules" and "Exhibits" shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

ARTICLE II
EXECUTION DATE AND DELIVERY PERIOD; NATURE OF ENERGY PROJECT

Section 2.1 Execution Date; Delivery Period. Unless this Agreement is terminated pursuant to Article XVII, delivery of Energy under this Agreement shall commence and continue for the Delivery Period.

Section 2.2 Termination Due to Failure to Issue Bonds or Provide Minimum Discount. Each Party shall have a right to terminate this Agreement with the effect that this Agreement shall be of no further force or effect and the Parties shall have no rights or obligations hereunder if (a) the Bonds are not issued on or before [____], 2021, or (b) Issuer notifies Purchaser that the expected Available Discount for the Initial Reset Period is less than the Minimum Discount.

Section 2.3 Nature of Energy Project. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Energy to Purchaser under this Agreement exclusively through its purchase of long-term supplies of Energy from MSES pursuant to the Energy Project and that Issuer is financing its purchase of such long-term supplies through the issuance of the Bonds. As provided in Section 3.2(a) below, [Purchaser shall pay a fixed price for Energy during the Initial EPS Energy Period and thereafter shall pay a floating price, less the Monthly Discount in each case][2].

Section 2.4 Pledge of this Agreement. Purchaser acknowledges and agrees that Issuer will pledge its right, title, and interest under this Agreement and the revenues to be received under this Agreement (other than revenues attributable to the Project Administration Fee) to secure Issuer's obligations under the Bond Indenture.

ARTICLE III
SALE AND PURCHASE

Section 3.1 Sale and Purchase of Energy. Issuer agrees to sell and deliver or cause to be delivered to Purchaser, and Purchaser agrees to purchase and take or cause to be taken from Issuer, in each case, on a Firm (LD) basis, the Contract Quantity of Energy pursuant to the terms and conditions set forth in this Agreement.

Section 3.2 Pricing.

(a) For each MWh of Energy delivered to Purchaser, Purchaser shall pay Issuer the applicable Contract Price. With respect to each MWh delivered under this Agreement, "Contract Price" means:

[(i) for Assigned Energy during the Initial EPS Energy Period, (A) the Assigned Fixed Price minus (B) the Monthly Discount; and

(ii) for Assigned Energy after the Initial EPS Energy Period, (A) the Day-Ahead Average Price for the Month in which Energy is delivered, minus (B) the Monthly

[2] HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.

Discount.][3] The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

(b) Issuer shall bill and Purchaser shall pay each Month, as part of the Billing Statement described in Article XIV, a "Project Administration Fee" equal to the product of (i) the quantity of MWhs delivered to Purchaser for such Month times (ii) [$0.__]/MWh (as may be modified by the Parties from time to time). **[NOTE: CCAs to confirm the amount of the Project Administration Fee, if any.]**

(c) During the term of this Agreement, promptly following completion of the annual audit of Issuer's financial statements at the end of each fiscal year (currently the twelve-month period ending [____]), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Energy Project for that fiscal year. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to Purchaser and the other Project Participants in the amount available after making allowances for any necessary and appropriate reserves and contingencies (including but not limited to amounts deemed reasonably necessary by Issuer to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds. The amount available for refund shall be allocated among and paid annually to Purchaser and the other Project Participants in proportion to their respective purchases for such fiscal year. As of the Execution Date, the projected Annual Refund for the Initial Rate Period is [$0.0x] per MWh.

Section 3.3 No Obligation to Take Base Energy. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Energy hereunder, and Issuer shall cause MSES to remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement.

Section 3.4 Reset Period Remarketing.

(a) Reset Period Notice. For each Reset Period, Issuer shall provide to Purchaser, at least ten (10) days prior to the Remarketing Election Deadline, formal written notice setting forth (i) the duration of such Reset Period, (ii) the [Estimated Available Discount (as defined in the Re-Pricing Agreement)] for such Reset Period, and (iii) the applicable Remarketing Election Deadline (a "Reset Period Notice"). Issuer may thereafter update such notice at any time prior to the Remarketing Election Deadline and may extend the Remarketing Election Deadline in its sole discretion in any such update.

(b) Remarketing Election. If the Reset Period Notice (or any update thereto) indicates that the Available Discount in such notice is not at least equal to the Minimum Discount for that Reset Period, then: (i) a "Potential Remarketing Event" shall be deemed to exist, and (ii) Purchaser may, not later than the Remarketing Election Deadline, issue a written notice in the form attached hereto as Exhibit C (a "Remarketing Election Notice") to Issuer, MSES and the Trustee

[3] HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.

electing for all of Purchaser's Energy that would otherwise be delivered hereunder to be remarketed during the applicable Reset Period; *provided*, however, if the actual Available Discount, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount, then Issuer may, in its sole discretion, elect by written notice to Purchaser to treat such Remarketing Election Notice as void (a "Voided Remarketing Election Notice"). [If Purchaser issues a valid Remarketing Election Notice (other than a Voided Remarketing Election Notice), then Purchaser shall have no rights or obligations to take any Energy hereunder or to receive any Annual Refund attributable to the applicable Reset Period.][4] For the avoidance of doubt, in the event that Purchaser issues a Remarketing Election Notice (other than a Voided Remarketing Notice), any rights and obligations assigned to MSCG under the Initial Assigned PPA or a subsequent Assignment Agreement including, without limitation, the right to receive Assigned Energy, shall revert to Purchaser as of the end of the Initial Reset Period or the then-current Reset Period, as applicable.

(c) Final Determination of Available Discount. The Parties acknowledge and agree that the final Available Discount for any Reset Period following the Initial Reset Period will be determined on the applicable [Re-Pricing Date (as defined in the Re-Pricing Agreement)], and that such Available Discount may differ from the estimate or estimates of such Available Discount provided to Purchaser prior to the applicable Remarketing Election Deadline. Accordingly, the Parties agree that:

(i) the Available Discount for any Reset Period will not be less than the Minimum Discount applicable to such Reset Period, unless Issuer has provided notice of a Potential Remarketing Event to Purchaser in accordance with Section 3.4(b); and

(ii) if Purchaser receives notice of a Potential Remarketing Event and has not provided a Remarketing Election Notice prior to the applicable Remarketing Election Deadline, Purchaser shall be deemed to have elected to continue to purchase and receive its Contract Quantity at a Contract Price that reflects the Monthly Discount portion of the Available Discount as finally determined on the applicable Re-Pricing Date, plus Purchaser's right to its share of Annual Refunds, if any, and all delivery and purchase obligations under this Agreement shall continue in full force and effect for the applicable Reset Period.

(d) Resumption of Deliveries. Notwithstanding the issuance of any Remarketing Election Notice for a Reset Period, Purchaser will (i) remain obligated to purchase the Contract Quantities hereunder for each subsequent Reset Period, unless Purchaser issues a new valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any such Reset Period in accordance with Section 3.4(b) and (ii) not make any new commitment to purchase Priority Energy during such Reset Period to the extent any such commitment could reasonably be expected to cause, during any portion of the Delivery Period after such Reset Period, Purchaser's aggregate obligations to purchase Priority Energy (including its obligation to purchase Priority Energy hereunder) to exceed Purchaser's expected aggregate requirements for Energy that will be used (A) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (B)

[4] HB NTD: To be updated consistent with provisions of Indenture relating to distribution of Annual Refund.

in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code.

(e) Reduction of Contract Quantity. The Parties recognize and agree that the Contract Quantity may be reduced in a Reset Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Issuer and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) Issuer will notify Purchaser, (B) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (C) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

ARTICLE IV
FAILURE TO DELIVER OR TAKE ENERGY

Notwithstanding anything herein to the contrary, neither Purchaser nor Issuer shall have any liability or other obligation to one another for any failure to Schedule, take, or deliver Assigned Product.

ARTICLE V
TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

Section 5.2 Scheduling. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Agreement.

Section 5.3 Title and Risk of Loss. Title to the Energy delivered under this Agreement and risk of loss shall pass from Seller to Buyer at the Assigned Delivery Point. The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.

Section 5.4 Deliveries within CAISO or Another Balancing Authority. The Parties acknowledge that Energy delivered by Issuer at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Energy into the applicable Balancing Authority shall constitute delivery of such Energy to Purchaser hereunder.

ARTICLE VI
PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 Future PPA Assignments. In connection with the expiration or termination of an EPS Energy Period, each of the Parties agrees to satisfy its obligations under the Assignment Letter Agreement, including but not limited to (a) Purchaser's obligation to exercise Commercially Reasonable Efforts to assign a portion of Purchaser's rights and obligations under a power purchase agreement under which Project Participant is purchasing EPS Compliant Energy to MSCG or MSES pursuant to an Assignment Agreement and (b) the Parties' obligations to cooperate in good faith with MSCG and MSES with respect to any proposed assignments.

Section 6.2 Updates to Exhibits A-1 and A-2.

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect any changes in the Hourly Quantities of Base Energy and Monthly Quantities of Assigned Energy and any other changes in connection therewith.

ARTICLE VII
USE OF ENERGY

Section 7.1 Tax Exempt Status of the Bonds. Purchaser acknowledges that the Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its CCA System as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Purchaser further agrees that it will not at any time take any action, or fail to take any action, that would adversely affect the tax-exempt status of the Bonds.

Section 7.2 Priority Energy. Subject to Section 7.5(a), Purchaser agrees to take the Contract Quantities to be delivered under this Agreement (a) in priority over and in preference to all Non-Priority Energy; and (b) on at least a pari passu and non-discriminatory basis with other Priority Energy.

Section 7.3 Remarketing Sales .

(a) Remarketing of Assigned Energy. If notwithstanding Purchaser's compliance with Section 7.1, a quantity of Assigned Energy less than the Monthly Quantity is

delivered hereunder in any Month for any reason, then (i) MSCG shall remarket such undelivered quantity of Assigned Energy to the PPA Supplier at the Contract Price plus the Monthly Discount then in effect, and (ii) Purchaser shall remain responsible for the Project Administration Fee for such quantity of Assigned Energy not delivered hereunder. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Assigned Energy that is 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 is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code;

(b) For Purchaser as the representing Party, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code, duly organized and validly existing under the Laws of the State of California;

(c) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(d) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its

obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(e) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(f) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(g) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(h) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Issuer, the lien of the Bond Indenture;

(i) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(j) it enters this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Warranty of Title. Issuer warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Purchaser, free and clear of all liens, encumbrances, and claims.

Section 8.3 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS ARTICLE VIII, ISSUER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.4 Continuing Disclosure. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer including its most recent audited financial statements for use in Issuer's offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its continuing disclosure undertakings under Rule 15(c)2-12 of the United States Securities and Exchange Commission. Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

ARTICLE IX
TAXES

Issuer shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Point, and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. Purchaser shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates.

ARTICLE X
DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge

to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Judicial Reference.

(a) Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "Dispute") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b) Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Party (the "Responding Party") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the "Negotiation Period"), then either Party may provide to the other Party written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two (2) referees (the

"Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees

will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(f) Expenses. Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

ARTICLE XI
FORCE MAJEURE

Section 11.1 Applicability of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 Settlement of Labor Disputes. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

ARTICLE XII
GOVERNMENTAL RULES AND REGULATIONS

Section 12.1 Compliance with Laws. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided*, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII
ASSIGNMENT

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; *provided*, however, that, subject to Section 18.14, neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement without the prior written consent of the other Party. Prior to assigning this Agreement, Purchaser shall deliver to Issuer (i) written confirmation from each of the Applicable Rating Agencies, *provided* that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by the Applicable Rating Agencies to the Bonds; or (ii) written confirmation from each of the Applicable Rating Agencies, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by the Applicable Rating Agencies to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

ARTICLE XIV
PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Purchaser shall deliver to Issuer a statement (a "Purchaser's Statement") listing any other amounts due to Purchaser in connection with this Agreement with respect to the prior Month(s).

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Issuer shall deliver a statement (a "Billing Statement") to Purchaser indicating (i) the total amount due to Issuer for Energy delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Issuer or Purchaser. If the actual quantity delivered is not known by the Billing Date, Issuer may provisionally prepare a Billing Statement based on Issuer's best available knowledge of the quantity of Energy delivered, which shall not exceed the Monthly Quantity or the sum of the Hourly Quantities in such Month, as applicable, plus any make-up quantities delivered during such Month. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Purchaser at the Default Rate) will then be adjusted on the following Month's Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to the Trustee for the benefit of the Issuer by wire transfer (pursuant to the Trustee's instructions), in immediately available funds, on or before the 20th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser's instructions), in immediately available funds, on or before the 28th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the following Business Day.

(b) If Purchaser fails to issue a Purchaser's Statement with respect to any Month, Issuer shall not be required to estimate any amounts due to Purchaser for such Month, provided that Purchaser may include any such amount on subsequent Purchaser's Statements issued within the next sixty (60) days. The sixty (60) day deadline in this subsection (b) replaces the two (2) year deadline in Section 14.5(b) with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts; Correction of Index Price.

(a) If Purchaser disputes any amounts included in the Issuer's Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Purchaser may have; *provided*, however, that Purchaser shall have the right, after payment, to dispute any amounts included in a Billing Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5. If Issuer disputes any amounts included in the Purchaser's Statement, Issuer may

withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

(b) If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within 30 days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than 30 days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 14.4 Late Payment. If Purchaser fails to remit the full amount payable within one Business Day of when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Purchaser's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Purchaser's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within thirty (30) days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on an incorrect Billing Statement shall bear interest at the Default Rate from the date such payment was made.

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV.

Notwithstanding the foregoing, payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Section 14.7 Source of Purchaser's Payments. Purchaser covenants and agrees to make payments due hereunder from CCA Revenues, and only from such CCA Revenues, as an operating expense of its CCA System; *provided*, however, that Purchaser may apply any legally available monies to the payment of amounts due hereunder.[5]

Section 14.8 Rate Covenant. Purchaser hereby covenants and agrees that it will establish, fix, prescribe, maintain, and collect rates, fees, and charges from the customers of its CCA System so as to provide CCA Revenues sufficient to enable Purchaser to pay any other amounts legally payable from CCA Revenues, and to maintain any required reserves for Purchaser's CCA System. Purchaser further covenants and agrees that it shall not furnish or supply Energy services free of charge to any Person, except any such service free of charge that Purchaser is supplying on the date hereof as has been specifically identified by Purchaser to Issuer in writing, and it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of Energy to its customers. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to make any payments hereunder except from CCA Revenues.[6]

Section 14.9 Pledge of CCA Revenues. Purchaser shall not grant any lien on or security interest in, or otherwise pledge or encumber, the CCA Revenues if the terms or effect of such lien, pledge or other encumbrance results in such lien, pledge or other encumbrance having priority over the obligations of Purchaser to pay the Contract Price, which obligations constitute operating expenses of Purchaser.

Section 14.10 Financial Responsibility. When reasonable grounds for insecurity of payments due under this Agreement arise, Issuer may demand, and Purchaser shall provide within two (2) Business Days if demanded, adequate assurance of performance. Reasonable grounds include but are not limited to the occurrence of an insolvency or liquidation proceeding with respect to Purchaser or the downgrading of Purchaser's credit rating, if any, to a level below investment grade, or such facts and circumstances which would constitute reasonable grounds for insecurity under applicable Law. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Issuer, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend its performance under this Agreement, including the making of deliveries of Energy to Purchaser, on one (1) day written notice and shall not be obligated to restore such performance until the later of (i) the first day of the Month after such demand has been satisfied, and (ii) the completion of the term of deliveries to any replacement sales customer to which MSES has remarketed the Energy on behalf of Issuer.

[5] NTD: Under review by CCAs.
[6] NTD: Under review by CCAs.

ARTICLE XV
[RESERVED]

ARTICLE XVI
NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to the other Party (or to a third party) shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party[; provided that any notice modifying payment instructions must be provided via certified mail with a contact person and phone number included for verification purposes]. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

ARTICLE XVII
DEFAULT; REMEDIES; TERMINATION

Section 17.1 Issuer Default. Each of the following events shall constitute an "Issuer Default" under this Agreement:

(a) any representation or warranty made by Issuer in this Agreement proves to have been incorrect in any material respect when made; or

(b) Issuer fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following the earlier of (i) receipt by Issuer of notice thereof or (ii) an officer of Issuer obtaining actual knowledge of such default.

Section 17.2 Purchaser Default. Each of the following events shall constitute a "Purchaser Default" under this Agreement:

(a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for one (1) Business Day following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default;

(b) Purchaser (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted

against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its 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; provided that, if the Bond Closing Date occurs after [_____], 2021, Purchaser shall deliver an updated Federal Tax Certificate, in the form attached hereto as Exhibit D but utilizing data for the five calendar years ending December 31, 2020, on the Bond Closing Date;

(b) on the Bond Closing Date, Purchaser shall deliver to Issuer an opinion of counsel to Purchaser in the form attached hereto as Exhibit E;

(c) on the Bond Closing Date, Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth hereto as Exhibit G.

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Each Party represents and covenants to and agrees with the other Party that it is not entitled to and shall not assert the defense of sovereign immunity or governmental immunity with respect to its obligations or any Claims under this Agreement, and each hereby waives any such defense of sovereign or governmental immunity to the full extent permitted by Law.

Section 18.11 Rates and Indices. If the source of any publication used to determine the index or other price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, an alternative index or other price will be used based on the determinations made by Issuer and MSES under [Section 18.11 of the Prepaid Agreement]. Issuer shall provide Purchaser the opportunity to provide its recommendations and other input to Issuer for Issuer's use in the process for selecting such alternative index or other price under [Section 18.11 of the Prepaid Agreement].

Section 18.12 Limitation of Liability. The obligations of Issuer under this Agreement are special and limited obligations payable solely from the revenues, income and funds of its Energy Project that are pledged pursuant to the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Third Party Beneficiaries; Rights of Trustee. Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the amounts payable by Purchaser under this Agreement (other than amounts payable in respect of the Project Administration Fee) to secure Issuer's obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Purchaser's obligations under this Agreement, (c) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (d) in the event of any Purchaser Defaults under Section 17.2(a), (i) MSES may, to the extent provided for in, and in accordance with, the [Receivables Purchase Provisions (as defined in the Bond

Indenture)], take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and shall thereafter have all rights of collection with respect to such receivables, and (ii) if such receivables are not so assigned, the [Swap Counterparty (as defined in the Bond Indenture)] shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer to the Swap Counterparty was caused by Purchaser's payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

Section 18.15 Waiver of Defenses. Purchaser waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Purchaser with regard to Purchaser's obligations pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Power Supply Contract to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Separate Signature Page(s) Attached]

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

[PARTICIPANT]

By: _____
Name: _____
Title: _____

EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To come.]

EXHIBIT A-2
EPS ENERGY PERIOD MONTHLY QUANTITY

[To come.]

EXHIBIT A-3
DAY-AHEAD AVERAGE PRICE WEIGHTING

[To come.]

EXHIBIT B
NOTICES

IF TO ISSUER: [_____]

Invoicing: [_____]

Payments: [_____]

Statements: [_____]

General Notices: [_____]

IF TO PURCHASER: [____]
Attention: [____]
[____][____], [____][____]
Phone: [____]
Email: [____]

Energy Related: [____]
Phone: [____]
Email: [____]

Invoicing/Payments: [____]
Phone: [____]
Email: [____]

EXHIBIT C
FORM OF REMARKETING ELECTION NOTICE

[_____]

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

[Trustee]
[Address]

To the Addressees:

The undersigned, duly authorized representative of [_____] (the "Purchaser"), is providing this notice (the "Remarketing Election Notice") pursuant to the Power Supply Contract, dated as of [____], 2021 (the "Supply Contract"), between California Community Choice Financing Authority and Purchaser. Capitalized terms used herein shall have the meanings set forth in the Supply Contract.

Pursuant to [Section 3.4(b)] of the Supply Contract, the Purchaser has elected to have its Contract Quantity for the applicable Reset Period remarketed beginning as of the commencement of such Reset Period. The resumption of deliveries in any future Reset Period shall be in accordance with [Section 3.4(d)] of the Supply Contract.

Given this [___] day of [_____], 20[__].

[Participant]

By: _____
Printed Name:
Title:

EXHIBIT D

FORM OF FEDERAL TAX CERTIFICATE[7]

This Federal Tax Certificate is executed in connection with the Power Supply Contract dated as of [_____], 2021 (the "Supply Contract"), by and between the [_____] ("Issuer") and [_____] ("Purchaser"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Contract or in the Bond Indenture.

WHEREAS Purchaser acknowledges that Issuer is issuing the Bonds to fund the prepayment price under the Prepaid Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Purchaser's use of Energy acquired pursuant to the Supply Contract and certain funds and accounts of Purchaser will affect the Bonds' qualification for such tax exemption.

NOW, THEREFORE, PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Purchaser is a community choice aggregator organized as a joint powers authority under the laws of the State of California. As a community choice aggregator, the Purchaser is a load-serving entity providing electricity to customers within the boundaries of cities and/or counties that have elected to participate in Purchaser's community choice aggregation program. For purposes of this Certificate, the term "service area" of the Purchaser means the boundaries of the cities and/or counties that have elected to participate in the Purchaser's community choice aggregation program, as well as any other area recognized as the service area of the Purchaser under state or federal law.

2. Purchaser will resell all of the Energy acquired pursuant to the Supply Contract to its retail Energy customers within its service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs or under authorized requirements contracts.

3. From [___, __] to [____, 2021] the annual average amount of Energy purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser is [_____] MWh. Over the term of the Supply Contract, the Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Purchaser who are located within the service area of the Purchaser to be at least [_____] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Supply Contract is [_____] MWh. The annual average amount of Energy which Purchaser otherwise has a right to acquire 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,

[7] NTD: As discussed, CCAs to discuss comments and questions regarding form of tax certificate with tax counsel.

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.

_____, 2021

By: _____
[Name]
[Title]

EXHIBIT E
FORM OF OPINION OF COUNSEL TO PURCHASER

California Community Choice Financing Authority
[____], [____]

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

Morgan Stanley
New York, New York

[*insert name of trustee*], as trustee
[____], [____]

[Swap Counterparty]
[____], [____]

Re: Power Supply Contract between [Participant] and California Community Choice Financing Authority dated as of [____], 2021

Ladies and Gentlemen:

We are Counsel to [Participant] ("Purchaser"). Purchaser is a Purchaser in the Energy Project undertaken by California Community Choice Financing Authority ("Issuer"). We are furnishing this opinion to you in connection with the Power Supply Contract between Issuer and Purchaser dated as of [____], 2021 (the "Supply Contract").

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning as is ascribed to them in the Supply Contract.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

(a) The Constitution and laws of the State of California (the "State") including, as applicable, acts, ordinances, certificates, articles, charters, bylaws, and agreements pursuant to which Purchaser was created and by which it is governed;

(b) Resolution No. [__], duly adopted by Purchaser on [_____] (the "Resolution") and certified as true and correct by certificate and seal, authorizing Purchaser to execute and deliver the Supply Contract;

(c) A copy of the Supply Contract executed by Purchaser; and

(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

_____, 2021

Re: California Community Choice Financing Authority
[Energy Project Revenue Bonds]

The undersigned _____ of the [_____] (the *"Purchaser"*), hereby certifies as follows in connection with the Power Supply Contract dated as of _____, 2021 (the *"Agreement"*) between the Purchaser and California Community Choice Financing Authority ("*Issuer*") and the issuance and sale by Issuer of the above-referenced bonds (the *"Bonds"*) (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

1. Purchaser is a community choice aggregator, duly created and validly existing as a joint powers authority, and is in good standing, under the laws of the State of California (the *"State"*), and has the corporate power and authority to enter into and perform its obligations under the Agreement.

2. By all necessary official action on its part, the Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Purchaser of the obligations on its part contained in the Agreement, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.

3. The Agreement constitutes the legal, valid and binding obligation of the Purchaser.

4. The authorization, execution and delivery of the Agreement and compliance with the provisions on the Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default under (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

5 The Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other

instrument to which the Purchaser is a party or to which the Purchaser or any of its property or assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Purchaser under any of the foregoing.

6. Payments to be made by the Purchaser under the Agreement shall constitute operating expenses of the Purchaser's CCA System (as defined in the Agreement) payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of the Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Purchaser in any court or administrative body which would (a) contest the right of the officials of the Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Purchaser, (c) contest the validity, due authorization and execution of the Agreement or (d) attempt to limit, enjoin or otherwise restrict or prevent the Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of the Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Purchaser of its obligations under the Agreement have been duly obtained.

9. The representations and warranties of the Purchaser contained in the Agreement were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to the Purchaser contained in the Official Statement dated _____, 2021 with respect to the Bonds, including Appendix B thereto (the *"Official Statement"*), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. No event affecting the Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with respect to the Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

[_____]

By_____

Name:

Title:

EXHIBIT H

FORM OF REMEDIATION CERTIFICATE

[_____], 20__

[_____]

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

Re: Power Supply Contract with [_____]: [Section 7.5] Remediation

To the addressees:

The undersigned, duly authorized representative of [____] ("Purchaser"), hereby certifies as follows in connection with the Power Supply Contract, dated as of [____], 2021 (the "Contract"), between Purchaser and [_____] and remediation of Disqualified Remarketing Proceeds pursuant to [Section 7.5] of the Contract. Capitalized terms used herein shall have the meanings set forth in the Contract.

Set forth as Attachment 1 hereto is a copy of Purchaser's invoice for the Month of [____] for purchases of Energy from [____] ***[NOTE: Insert reference to supplier.]*** pursuant that certain [____] ***[NOTE: Insert reference to applicable supply agreement.]***, and all of such Energy was used in compliance with the Qualifying Use Requirements.

In witness whereof the undersigned has executed this Certificate on and as of the date first written above.

[PARTICIPANT]

By _____
[Name]
[Title]

LETTER AGREEMENT

[____], 2020

[CCA]
[_____]
[_____]

[Issuer]
[_____]
[_____]

Re: PPA Assignments for Delivery under Prepay Energy Agreements

Ladies and Gentlemen:

This Letter Agreement (this "Letter Agreement") confirms our mutual agreement with respect to the matters set forth below and relates to (i) that certain Power Supply Contract (the "Power Supply Contract"), dated as of the date hereof, by and between [Issuer] ("Issuer") and [Participant] ("Project Participant"), (ii) that certain Prepaid Energy Sales Agreement (the "Prepaid Agreement"), dated as of the date hereof, by and between Morgan Stanley Energy Structuring, L.L.C. ("MSES") and Issuer, and (iii) that certain Energy Management Contract (together with the Power Supply Contract and the Prepaid Agreement, the "Prepay Energy Agreements"), dated as of the date hereof, by and between Morgan Stanley Capital Group Inc. ("MSCG") and MSES. Any capitalized term used in this Letter Agreement and not otherwise defined herein shall have the meaning assigned to such term in the Power Supply Contract. In consideration of each party's execution of the respective Prepay Energy Agreements, as well as the premises above and the mutual covenants and agreements set forth herein, Issuer, Project Participant, MSES and MSCG (collectively, the "Parties") agree as follows:

1. **PPA Assignments for Delivery under Prepay Energy Agreements**.

(a) Initial Assignment. Concurrently with the execution of the Prepay Energy Agreements, Project Participant has assigned and [MSES]/[MSCG] has agreed to assume a portion of Project Participant's rights and obligations under the Initial Assigned PPA. **[NOTE: Initial Assigned PPA to be changed to plural if more than one PPA is assigned at the outset.]**

(b) Replacement Assignments. Commencing (i) six months prior to the expiration of any EPS Energy Period or the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract or (ii) otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, Project Participant shall exercise Commercially Reasonable Efforts to assign a portion of Project Participant's rights and obligations (the "Assigned Rights and Obligations") under one or more power purchase agreements under which Project Participant is purchasing EPS Compliant Energy pursuant to an Assignment Agreement substantially in the form of (A) the Limited Assignment

Agreement set forth as Exhibit A hereto if the PPA Supplier is an unrelated third party or (B) the Limited Assignment Agreement set forth as Exhibit B hereto if the PPA Supplier is MSCG, and the Parties shall cooperate in good faith with respect to any proposed assignments; provided that

(1) any subsequent Assignment Agreement shall provide (I) for the assignment by Project Participant to either (a) MSES if MSCG is the PPA Supplier or (b) MSCG if the PPA Supplier is an unrelated third party of its right to receive a portion of the Energy (and any associated products set forth in the Assignment Agreement) delivered under the applicable power purchase agreement for each Month of the applicable EPS Energy Period and (II) for payment by MSES or MSCG as applicable to the PPA Supplier under such subsequent power purchase agreement of the Day-Ahead Average Price for each Month of the applicable EPS Energy Period, with such amounts to be credited in the PPA Supplier's monthly invoice to Project Participant against other amounts owed by Project Participant under the Assigned PPA during the EPS Energy Period;

(2) any third party PPA Supplier must satisfy MSCG's internal credit and approval requirements and other requirements applied on a nondiscriminatory basis, including any "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies;

(3) any such assignment must be agreed and consented to by Project Participant, MSES and MSCG in their reasonable discretion; and

(4) the Parties recognize that MSCG will be obligated to sell and deliver Assigned Product it receives from a third party PPA Supplier to MSES under the Energy Management Agreement; MSES will be obligated to deliver Assigned Product that it acquires to Issuer under the terms of the Prepaid Agreement; and Issuer will be obligated to deliver Assigned Product that it acquires to Project Participant under the terms of the Power Supply Contract.

(c) MSCG Procurement of EPS Compliant Energy. To the extent that (i) Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement by the date that is 75 days prior to (A) the end of any EPS Energy Period or (B) the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract, or (ii) an early termination of an EPS Energy Period has occurred and Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement, then MSCG shall exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Project Participant, provided that:

(1) Project Participant must consent to MSCG's procurement of any such EPS Compliant Energy for ultimate redelivery to Project Participant, with such consent not to be unreasonably withheld;

(2) the Parties shall act in good faith and in a Commercially Reasonable manner to negotiate any necessary amendments to the Prepay Energy Agreements to facilitate the delivery of such EPS Compliant Energy; and

(3) the period of delivery for any such EPS Compliant Energy (any such period, a "MSCG EPS Energy Period") shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in a subsequent Reset Period.

(d) Tax Opinion. The Parties acknowledge and agree that their ability to enter into a new Reset Period will be contingent on obtaining an [Opinion of Special Tax Counsel] (as defined in the Bond Indenture), which will be dependent on the availability of EPS Compliant Energy for delivery in such Reset Period.

2. **Failure to Obtain EPS Compliant Energy**. To the extent an EPS Energy Period terminates or expires and Project Participant and MSCG have been unable to obtain EPS Compliant Energy for delivery under the Prepay Energy Agreements pursuant to the provisions of Paragraph 1, then MSES shall remarket the Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement, subject to the following:

(a) the Parties' obligations set forth in Paragraph 1 shall continue to apply;

(b) Project Participant shall not make any new commitment to purchase Priority Energy during such a remarketing[1]; and

(c) consistent with [Section 7.5] of the Power Supply Contract, Project Participant shall exercise Commercially Reasonable Efforts to remediate any Disqualifed 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.

[1] HB NTD: All parties are incentivized to cooperate to locate EPS Compliant Energy for redelivery through the prepaid transaction, and, from a practical perspective, we think that tying this restriction to whether MSCG rejected the assignment creates ambiguity and the potential for disputes. E.g., If MSCG and a developer cannot agree upon the terms of an Assignment Agreement, did MSCG reject the assignment?

(b) **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

(c) **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

(d) **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(e) **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No

communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

(g) **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

(h) **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

4. **Counterparts**. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

5. **Costs and Expenses**. The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

6. **Amendments**. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

7. **Notices**. Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon written 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at 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) Any matter before the Referee shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referee. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of MSCG and Project Participant shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and Project Participant.

[Signature Pages to Follow]

Very truly yours,

MSES

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

MSCG

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name: _____
Title: _____

ACKNOWLEDGED, ACCEPTED AND AGREED TO as of the date first set forth above:

PARTICIPANT

[CCA]

By: _____
Name: _____
Title: _____

ISSUER

[ISSUER]

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

[To come.]

EXHIBIT B

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

[To come.]

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Agreement**") is entered into as of [____] by and among [____], a [____] ("**PPA Seller**"), [East Bay Community Energy Authority][Silicon Valley Clean Energy Authority], a joint powers authority and a community choice aggregator organized under the laws of the State of California ("**PPA Buyer**"), and [Morgan Stanley Capital Group Inc., a Delaware corporation][1] ("**MSCG**").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain [____], dated as of [____] (the "**PPA**");

WHEREAS, in connection with a prepaid electricity transaction between [_____] (**"Issuer"**) and Morgan Stanley Energy Structuring, L.L.C. ("**MSES**"), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, MSCG will receive the Assigned Product and MSCG will deliver the Assigned Product to MSES, which will redeliver the Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, MSCG will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the "**Parties**" hereto; each is a "**Party**") agree as follows:

AGREEMENT

1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"**Agreement**" has the meaning specified in the first paragraph above.

"**Assigned Delivery Point**" has the meaning specified in Appendix 1.

[1] HB NTD: MSCG will be the limited assignee to the extent that the PPA Seller is a third party supplier, but, to the extent that MSCG is the supplier, MSES will be the limited assignee and references to MSCG will be replaced with references to MSES.

"**Assigned Energy**" means any Electricity associated with the Assigned Product to be delivered to MSCG hereunder pursuant to the Assigned Rights and Obligations.

"**Assigned Monthly Quantity**" means the first [___] 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.

"**Assignment Early Termination Date**" has the meaning specified in Section 5(b).

"**Assignment Period**" has the meaning specified in Section 5(a).

"**Assignment Period End Date**" means 11:59:59 p.m. pacific prevailing time on [____].

"**Assignment Period Start Date**" means [_____].

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

"**Claims**" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"**Delivered Product Payment Obligation**" has the meaning specified in Section 3(a).

"**Electricity**" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"**Government Agency**" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"**Issuer**" means [____], a [____] **[NOTE: This will be the JPA or other entity formed for purposes of issuing municipal bonds for the prepaid transaction.]**.

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

"**Month**" means a calendar month.

"**MSCG**" has the meaning specified in the first paragraph of this Agreement.

"**MSES**" means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company.

"**Person**" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

"**PPA Buyer**" has the meaning specified in the first paragraph of this Agreement.

"**PPA Seller**" has the meaning specified in the first paragraph of this Agreement.

"**Prepaid Agreement**" means that certain Prepaid Energy Sales Agreement dated as of [____] by and between MSES and Issuer.

"**Prepay Power Supply Contract**" means that certain Prepay Power Supply Contract dated [____] by and between PPA Buyer and Issuer.

"**Receivables**" has the meaning given to such term in Section 3(e).

"**Retained Rights and Obligations**" has the meaning specified in Section 3.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

2. Transfer and Undertakings.

(a) PPA Buyer hereby assigns, transfers and conveys to MSCG all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned

Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period.

(c) MSCG hereby accepts such assignment, transfer and conveyance of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**", and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation; Invoicing**.

i. MSCG's sole obligation to PPA Seller will be to pay the Assigned Product Price (as defined in the PPA) to PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [__] of the PPA for a quantity up to, but not exceeding, the Assigned Monthly Quantity (the "**Delivered Product Payment Obligation**"). PPA Buyer shall remain solely responsible for any payment obligations other than the Delivered Product Payment Obligation due under the PPA during the Assignment Period (the "**Retained Payment Obligation**").

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSCG, and each such invoice shall indicate (A) the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

(b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or

related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Scheduling**. All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to MSCG upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSCG's agent with regard to scheduling Assigned Energy; provided, however, that PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs; and (iv) (A) PPA Buyer and PPA Seller will provide copies to MSCG of (I) any notice of force majeure delivered under the PPA and (II) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in a default; (B) PPA Seller will provide copies to MSCG of annual forecasts and monthly forecasts and generation reports delivered under the PPA; and (C) PPA Buyer and PPA Seller, as applicable, will provide copies to MSCG of any other information reasonably requested by MSCG relating to Assigned Product.

(d) **Amendments**. PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG's rights or obligations under this Agreement until and unless MSCG receives written notice thereof.

(e) **Setoff of Receivables**. Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSCG pursuant to the Assigned Rights and Obligations, MSES may sell such Receivables to MSCG and MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

4. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

(a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.

(b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;

ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;

iii. the election of MSCG in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSCG's rights or obligations under this Agreement (provided that MSCG shall not have a right to terminate under this clause (b) to the extent that MSCG (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by MSCG to PPA Buyer and PPA Seller;

iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if MSCG fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSCG of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;

vi. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSCG seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSCG commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSCG consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSCG or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSCG or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSCG and PPA Buyer have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations hereunder immediately following the termination hereof, which Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the "Assignment Period" under the replacement Assignment Agreement as specified in the notice from MSCG or PPA Buyer to the other Parties; and

viii. PPA Buyer may deliver written notice of termination to the other Parties if any change, event or effect occurs, including but not limited 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 inconsistences between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

(c) **Reserved**.

(d) **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "**chairperson**") within thirty (30) days of the commencement of the arbitration. If either MSCG or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the MSCG and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(d) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 11(d), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(e) **Judicial Reference.** Without limiting the provisions in Section 11(d), if Section 11(d) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a

Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(e)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 11.

ii. Applicability; Selection of Referees.

(A) Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed Referees**") shall appoint a third referee (the "**Third Referee**", together with the Party-Appointed Referees, the "**Referees**"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(B) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "**Court**"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within

180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of MSCG and PPA Buyer shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and PPA Buyer.

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

[PPA SELLER]

By: _____
Name:_____
Title:_____

[CCA]

By: _____
Name:_____
Title:_____

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name:_____
Title:_____

Appendix 1
Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller

Assigned Delivery Point: [Facility PNode/Settlement Point (as defined in the PPA)**]**

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

[Include additional requirements, if any]

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

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

C&C DRAFT: 7.16.21

PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this "Agreement") is made and entered into as of [____], 2021, by and among California Community Choice Financing Authority ("CCCFA"), East Bay Community Energy Authority ("EBCE") and Silicon Valley Clean Energy Authority ("SVCE" and, together with EBCE, the "Commodity Purchasers"), with respect to the Prepaid Energy Project (defined below). CCCFA, EBCE and SVCE may be referred to individually herein as a "Party" and collectively as the "Parties". Capitalized terms used herein (including in the following Recitals) have the meanings given to such terms in Section 1.

W I T N E S S E T H:

WHEREAS, each Commodity Purchaser is a "community choice aggregator" under the Public Utilities Code; and

WHEREAS, the Commodity Purchasers and certain other community choice aggregators have created CCCFA is a joint exercise of powers authority under and pursuant to the Act and the Joint Powers Agreement; and

WHEREAS, CCCFA's purpose is to assist its Members (as defined in the Joint Powers Agreement), including the Commodity Purchasers, by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined in the Joint Powers Agreement) and entering into related contracts with Members; and

WHEREAS, CCCFA and each of the Commodity Purchasers are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to the Commodity Purchasers under the terms set forth therein; and

WHEREAS, in order to provide such Energy to the Commodity Purchasers under the Power Supply Contracts, CCCFA is entering into the Prepaid Agreement with MSES, under which it will make a prepayment to MSES for the purchase and delivery of such Energy; and

WHEREAS, the Issuer will finance the prepayment under the Prepaid Agreement and related costs by issuing the Bonds pursuant to the Indenture; and

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Defined Terms. Capitalized terms used herein shall have the meanings set forth below:

"Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended.

"Alternate Energy Delivery Point" has the meaning specified in Section 5.1(a) of each Power Supply Contract.

"Annual Refund" means the annual refund, if any, to be provided to a Commodity Purchaser pursuant to Section 3.2(c) of its Power Supply Contract.

"Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.

"Assigned Energy" has the meaning specified in the applicable Assignment Agreement.

"Assigned Product" means Assigned Energy and associated renewable energy credits, green energy attributes and any other product included in an Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"Assignment Letter Agreement" has the meaning specified in each Power Supply Contract.

"Base Energy" means Energy to be delivered to an Energy Delivery Point.

"Bonds" means the bonds issued by CCCFA pursuant to the Indenture on or about the date of this Agreement in order to finance the prepayment required to be made to MSES under the Prepaid Agreement and related costs of the Prepaid Energy Project, and any bonds issued to refund such bonds.

"CCCFA" means California Community Choice Financing Authority, a joint exercise of powers authority created under and pursuant to the Act and the Joint Powers Agreement.

"CCCFA Commodity Swap" means the ISDA Master Agreement, Schedule and transaction Confirmation entered into by CCCFA and the swap counterparty named therein, and any replacement swap entered into pursuant to the Prepaid Agreement.

"Commodity Purchaser" means EBCE or SVCE, as applicable, and "Commodity Purchasers" means both EBCE and SVCE.

"Contract Quantity" means, with respect to a Commodity Purchaser, the quantity of Base Energy or Assigned Energy, as applicable, specified for such Commodity Purchaser in Exhibits A-1 and A-2 of its Power Supply Contract, as such Exhibits A-1 and A-2 may be updated from time to time in accordance with the terms of the Power Supply Contract.

"EBCE" means East Bay Community Energy Authority, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.

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

"Energy Delivery Point" means, with respect to a Commodity Purchaser, the delivery point for delivery of its Contract Quantity to such Commodity Purchaser as specified in its Power Supply Contract, and shall include, if applicable, any Assigned Delivery Point and any Alternate Delivery Point for such Commodity Purchaser.

"Indenture" means the Trust Indenture, dated as of [_____], 2021, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

"Initial Assignment Agreement" with respect to a Commodity Purchaser, the initial assignment agreement or agreements specified in its Power Supply Contract.

"Joint Powers Agreement" means the Joint Powers Agreement by and among the Members of CCCFA named therein, including the Commodity Purchasers, providing for the creation, purposes and powers of CCCFA, as the same may be amended or supplemented from time to time in accordance with its terms.

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

"Power Supply Contract" means, with respect to a Commodity Purchaser, the Power Supply Contract, dated [_____], 2021, between CCCFA and such Commodity Purchaser relating to the purchase by such Commodity Purchaser of Energy acquired by CCCFA pursuant to the Prepaid Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Agreement" means the Prepaid Energy Sales Agreement, dated [_____], 2021, between CCCFA, as buyer, and MSES, as seller, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Energy Project" means the issuance of the Bonds by CCCFA pursuant to the Indenture, the acquisition of Energy and related undertakings of CCCFA under the Prepaid Agreement and the Indenture, and the sale to the Commodity Purchasers of such Energy and related undertakings of CCCFA under the Power Supply Contracts.

"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 each Power Supply Contract.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and MSES.

"Schedule", "Scheduled" or "Scheduling" means the actions of a Party and/or its designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"SVCE" means Silicon Valley Clean Energy Authority, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.

"Tax Certificate and Agreement" means the Tax Certificate and Agreement executed and delivered by CCCFA in connection with the issuance of the Bonds relating to certain federal income tax compliance requirements relating to the Prepaid Energy Project.

"Transmission Provider(s)" means any entity or entities transmitting or transporting Energy on behalf of a Party to or from an Energy Delivery Point.

"Trustee" means [____], and its successors as Trustee under the Indenture.

Section 2. Assignment Agreements. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, each Commodity Purchaser has entered into the Initial Assignment Agreement specified in its Power Supply Contract with respect to its entire Contract Quantity;

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

(c) each Commodity Purchaser shall determine, independent of the other Commodity Purchaser or CCCFA, when and if any Assignment Agreement is entered into or terminated and the underlying agreement and portion of its Contract Quantity to which such Assignment Agreement relates.

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Agreement that is attributable to an Assignment Agreement(s) entered into by a Commodity Purchaser shall be attributable to such Commodity Purchaser under its Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to the Commodity Purchaser's Assigned Delivery Point and the transfer of other Assigned Product to a Commodity Purchaser, or (b) any accounting for under-deliveries or over-deliveries or other record-keeping requirements with respect to any Assigned Energy and other Assigned Product, all of which shall be the sole responsibility of the applicable Commodity Purchaser pursuant to the related Assignment Agreement(s).

Section 4. Qualified Use; Remarketing of Base Energy. As provided in each Power Supply Contract, any portion of a Commodity Purchaser's Contract Quantity that is not delivered as Assigned Energy is required to be delivered as Base Energy and simultaneously remarketed by MSES pursuant to the Prepaid Agreement. The applicable Commodity Purchaser shall be responsible for accounting for any portion of such Commodity Purchaser's Contract Quantity deemed delivered as Base Energy and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements. Each Commodity Purchaser agrees to provide to CCCFA any information reasonably requested by it in order to comply with any reporting or record-keeping requirements related to such deemed deliveries and remarketing of Base Energy, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Prepaid Agreement, the Indenture or the Tax Certificate and Agreement.

Section 5. CCCFA Commodity Swap. CCCFA shall not take any action to terminate or designate the early termination of the CCCFA Commodity Swap except in accordance with written

instructions of the Commodity Purchasers acting jointly, or unless otherwise required under the terms of the Prepaid Agreement.

Section 6. Directions, Consents and Waivers. CCCFA may be requested or required from time to time to provide certain directions, consents, or waivers under the terms of the Prepaid Agreement, the Indenture and the Re-pricing Agreement. In the event any such direction, consent or waiver relates solely to the Contract Quantity and/or Power Supply Contract of a Commodity Purchaser and no event of default has occurred and is continuing with respect to such Commodity Purchaser under its Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by such Commodity Purchaser. Otherwise, any such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions of the Commodity Purchasers acting jointly.

Section 7. Annual Refund. Any Annual Refund to be provided to the Commodity Purchasers pursuant to Section 3.2(c) of the Power Supply Contracts shall be determined *pro rata* based on the Contract Quantity of each Commodity Purchaser during the applicable annual period; *provided, however*, any surplus revenues derived from the remarketing of Base Energy on behalf of a Commodity Purchaser pursuant to Section 7.3 of its Power Supply Contract for a price in excess of the applicable Contract Price (as defined in the Power Supply Contracts) shall be credited to such Commodity Purchaser in calculating such Annual Refund.

Section 8. Re-pricing Information. CCCFA shall provide, or cause MSES to provide, to each Commodity Purchaser such information as is required to be provided by MSES to CCCFA in accordance the Re-pricing Agreement at such times as are required under the Re-pricing Agreement.

Section 9. Notices. Notices and other information to be provided by a Party to any other Party under this Agreement shall be provided in accordance with Article XVI of the applicable Power Supply Contract.

Section 10. Governing Law. This Agreement and the obligations of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of California.

Section 11. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

CUSTODIAL AGREEMENT

This Custodial Agreement (this "Agreement") is made and entered into as of [____], 2021, by and among [East Bay Community Energy Authority][Silicon Valley Clean Energy Authority], a joint powers authority and a community choice aggregator organized under the laws of the State of California ("PPA Buyer"), Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG"), and [____], a [____], (the "Custodian" and together with PPA Buyer and MSCG, the "Parties", and each individually, a "Party").

RECITALS:

WHEREAS, [____] ("Issuer") is issuing its Energy Project Revenue Bonds, Series 2021 (the "Bonds") pursuant to the Trust Indenture, dated as of [____], 2021 (the "Bond Indenture") between Issuer and The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the Bond Indenture (the "Trustee"); and

WHEREAS, Morgan Stanley Energy Structuring, L.L.C. ("MSES") and Issuer are entering into that certain Prepaid Energy Sales Agreement, dated as of the date hereof (the "Prepaid Agreement"); and

WHEREAS, in connection with the execution of the Prepaid Agreement, MSES and MSCG are entering into an Energy Management Agreement, dated as of the date hereof (the "Energy Management Agreement"); and

WHEREAS, in connection with the execution of the Prepaid Agreement, Issuer and PPA Buyer are entering into a Power Supply Agreement, dated as of the date hereof (the "Power Supply Agreement" and together with the Prepaid Agreement and the Energy Management Agreement, the "Prepay Supply Contracts"); and

WHEREAS, in connection with or subsequent to the execution of the Prepay Supply Contracts, MSCG, Issuer and PPA Buyer may enter into one or more Limited Assignment Agreements (the "Assignment Agreements") pursuant to which PPA Buyer partially assigns its rights and obligations under its power supply contracts ("Assigned PPAs") for redelivery of energy and other specified products pursuant to the Prepay Supply Contracts; and

WHEREAS, the Parties propose to enter into this Custodial Agreement in order to administer payments to be received by the sellers under the Assigned PPAs (each, individually, a "PPA Seller" and collectively the "PPA Sellers", and which definitions shall include any new PPA Seller identified by MSCG's delivery of an updated Exhibit A consistent with Section 3(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 MSCG to the Custodian pursuant to Section 4(e).

"Monthly Gross Amount" means, in respect of each Monthly Statement, an amount equal to the total net amount due to the applicable PPA Seller in respect of such Monthly Statement and shall consist of the following components: (a) the Delivered Product Payment Amount and (b) the Retained Payment Amount (if such amount is a positive number for such Month).

"Monthly Statement" means the monthly consolidated invoice delivered to MSCG and PPA Buyer consistent with the terms of the applicable Assignment Agreement.

"Monthly Statement Payment Date" means the last Business Day on which payment with respect to a Monthly Statement may be made before any incremental interest arises thereon or any default or breach arises under the Assigned PPA.

"Retained Payment Amount" means, in respect of each Monthly Statement, an amount equal to (a) all amounts owed to the applicable PPA Seller for such Month, less (b) the Delivered Product Payment Amount; provided that, to the extent the Retained Payment Amount is negative in any Month, then the absolute value of such amount shall represent an amount to be paid by the Custodian to PPA Buyer pursuant to Section 4(c)(ii) hereof.

Section 2. Appointment of Custodian. PPA Buyer and MSCG hereby appoint [____] as Custodian under this Agreement, with such rights and obligations as are specifically set forth herein. The Custodian hereby accepts such appointment under the terms and conditions set forth herein.

Section 3. Payment Instructions to Custodian; Assigned PPA Exhibits.

(a) No later than [seven] days following MSCG and PPA Buyer's receipt of a Monthly Statement from a PPA Seller, MSCG shall notify the Custodian of the Delivered Product Payment Amount, the Retained Payment Amount, the Monthly Gross Amount, the Monthly Statement Payment Date and the Custodial Agreement Payment Date as reflected in such Monthly Statement.

(b) Exhibit A to this Agreement sets forth certain information regarding the Assigned PPAs as of the date hereof, including the Assignment Periods and Assigned Product Prices for each Assigned PPA, the PPA Sellers thereunder and the payment instructions for payments to the PPA Sellers. MSCG shall deliver an updated Exhibit A to each of the other Parties hereto to reflect any changes to the information set forth therein, including due to the expiration, extension or termination of an Assignment Period or the commencement of a new Assignment Period.

Section 4. Assigned PPA Payments Account.

(a) Custodial Account. With respect to payments required to be made by MSCG and PPA Buyer to the PPA Sellers under the Assigned PPAs, there is hereby established with the Custodian at its office located at [_____], the following custodial account: a payments account designated as the "[____] Acct.", bearing Custodian's Account No. [____] (the "Assigned PPA Payments Account") and all payments made by MSCG and PPA Buyer hereunder shall be wired to such Assigned PPA Payments Account:

[_____]
ABA: [_____]
FBO: [_____]
FFC: [_____][1]

(b) MSCG and PPA Buyer Monthly Payments.

(i) MSCG shall make payment of the Delivered Product Payment Amount on the Custodial Agreement Payment Date for each Month of any Assignment Period.

(ii) For each Month of any Assignment Period for which the Retained Payment Amount is a positive number, PPA Buyer shall make payment of such amount on the Custodial Agreement Payment Date. For each Month of any Assignment Period for which the Retained Payment Amount is a negative number, PPA Buyer shall have no payment obligation for such Month and the Custodian will pay the absolute value of such amount to PPA Buyer consistent with Section 4(c)(ii).

(c) Transfers by Custodian.

(i) For any Month in an Assignment Period for which the Retained Payment Amount is a positive number, the Custodian shall withdraw the amounts on deposit in the Assigned PPA Payments Account to make payment of the Monthly Gross Amount on the Monthly Statement Payment Date by separate wire transfers to applicable PPA Seller of the amounts received from each of MSCG and PPA Buyer, respectively, and each wire transfer shall indicate whether the transfer is of amounts received from MSCG or PPA Buyer.

(ii) For any Month in an Assignment Period for which the Retained Payment Amount is a negative number, the Custodian shall withdraw amounts on deposit in the Assigned PPA Payments Account (A) first to make payment of the Monthly Gross Amount

[1] NTD: Custodian to provide wire instructions.

to the applicable PPA Seller in respect of each Monthly Statement on the relevant Monthly Statement Payment Date pursuant to the payment instructions set forth on Exhibit A; and (B) immediately thereafter to make payment of the absolute value of such Retained Payment Amount to PPA Buyer pursuant to the payment instructions set forth on Exhibit B. If the amounts on deposit in the Assigned PPA Payments Account are insufficient to pay the entirety of either such amounts, the Custodian shall apply the amounts available in the order specified in the preceding sentence.

(d) Amounts deposited in the Assigned PPA Payments Account shall be held in trust for the benefit of PPA Buyer until applied as set forth in Section 4(c) and Section 12, as applicable, and there is hereby granted to PPA Buyer a lien on and security interest in the Assigned PPA Payments Account pending such application. Except for any amounts due and payable to PPA Buyer pursuant to Section 4(c)(ii), the Custodian shall not be required to comply with any orders, demands, or other instructions from PPA Buyer with respect to the Assigned PPA Payments Account, including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, and PPA Buyer agrees that, except as set forth in Section 4(c)(ii), prior to the termination of this Agreement in accordance with the terms hereof, it shall have no right to direct the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, or to withdraw or otherwise obtain funds or other assets held in or credited to the Assigned PPA Payments Account, whether by order or instruction to the Custodian or otherwise.

(e) With respect to each Monthly Statement, to the extent MSCG has purchased Receivables (as defined in the Prepaid Agreement) for amounts owed by PPA Buyer for the Month to which such Monthly Statement relates, MSCG may, at its option, (i) notify the Custodian that it intends to transfer all or any portion of such Receivables to the PPA Seller, and (ii) reduce the Delivered Product Payment Amount by the face amount of such Receivables to be transferred. To the extent MSCG has notified the Custodian of its intent to transfer any such Receivables, MSCG shall cause such Receivables to be transferred to the PPA Seller not later than the relevant Monthly Statement Payment Date.

Section 5. Custodian. The Custodian shall have (a) no liability under any agreement other than this Agreement and (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 MSCG or PPA Buyer to make the deposits required under Section 4. The Custodian shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Custodian's gross negligence or willful misconduct was the primary cause of any loss to any other Party hereto. In connection with the execution of any of its powers or the performance of any of its duties hereunder, the Custodian may consult with counsel, accountants and other skilled persons selected and retained by it. The Custodian shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other

skilled persons, provided the Custodian exercised due care and good faith in the selection of such person. The permissive rights of the Custodian to take actions enumerated under this Agreement shall not be construed as duties. In the event that the Custodian shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other Parties hereto or by a final order or judgment of a court of competent jurisdiction. The Custodian may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such 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. Reimbursement. MSCG and PPA Buyer agree, jointly and severally (subject to the second proviso of this Section 7), to reimburse the Custodian and its directors, officers, agents and employees for any and all loss, liability or expense (including the fees and

expenses of in-house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (a) its acting as the Custodian under this Agreement, except to the extent that such loss, liability or expense is finally adjudicated to have been caused primarily by the gross negligence or willful misconduct of the Custodian or such director, officer, agent or employee seeking reimbursement, or (b) its following any instructions or other directions from MSCG or PPA Buyer, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof; provided, however, that any amounts due under this Section 7 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 13 hereof; provided further, however, that, notwithstanding the joint and several nature of the obligations under this Section 7, any amounts due under clause (b) of this sentence resulting from instructions or directions that are not expressly provided for in this Agreement and are given to the Custodian by only one Party shall be the sole obligation of such Party. The Parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 8. Taxpayer Identification Numbers; Tax Matters. MSCG 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 9. 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 Party's email address specified in Exhibit B. Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods, such as electronic mail. Notwithstanding the foregoing, any Party may at any time notify the others that any notice, demand, statement or request to it must be provided by email transmissions for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

(b) Exhibit A shall include each PPA Seller's notice and payment information as set forth in the Assigned PPAs, and MSCG and PPA Buyer promptly shall cause such information to be updated to the extent there are any changes to such information under the Assigned PPAs.

Section 10. Miscellaneous.

(a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the Parties hereto.

(b) Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party, except as provided in Section 6, without the prior written consent of the other Parties.

(c) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF THE LAWS ANOTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE AUTHORITY OF PPA Buyer TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE.

(d) EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF (A) THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN, (B) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK OR (C) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA IN ANY OTHER STATE. THE PARTIES FURTHER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT.

(e) No Party to this Agreement shall be liable to any other Party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control; provided that a Party affected by any such event shall exercise commercially reasonable efforts to resume performance as quickly as possible.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by digital pdf transmission, and such facsimile or pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

(g) The Custodian shall not be under any obligation to invest or pay interest on amounts held in the Assigned PPA Payments Account from time to time.

(h) Issuer shall have only such duties under this Agreement as are expressly set forth herein as duties on its part to be performed, and no implied duties shall be read into this Agreement against Issuer.

Section 11. Compliance with Court Orders. In the event that any amount held by the Custodian hereunder shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, the Custodian is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing are binding upon it, whether with or without jurisdiction, and in the event that the Custodian obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree may be subsequently reversed, modified, annulled, set aside or vacated.

Section 12. Term; Winding Up. This Agreement will expire concurrently with the receipt of written notice from PPA Buyer, with a copy to the other Parties, that the Power Supply Agreement has terminated in accordance with its terms. Following the Custodian's payment of any Monthly Gross Amount due in respect of the final Month of power deliveries prior to such a termination, any remaining balance in the Assigned PPA Payments Account shall be paid to PPA Buyer.

Section 13. Indemnification. MSCG and PPA Buyer, jointly and severally, agree to protect, indemnify, defend and hold harmless, the Custodian, and affiliates, and each person who controls the Custodian (and each of their respective directors, officers, agents and employees) from and against all claims, losses, liabilities, actions, suits, costs, judgments and expenses (including court costs and reasonable attorneys' fees) arising from its acting as Custodian hereunder (including, for the avoidance of doubt, any costs, expenses and reasonable attorneys' fees incurred in enforcing any payment obligation of an indemnifying Party), except for any claim, damage or loss resulting from the gross negligence or willful misconduct of the Custodian; provided, however, that any amounts due under this Section 13 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 7 hereof. The obligations of this Section 13 shall survive any resignation or removal of the Custodian and the termination of this Agreement. In addition, notwithstanding anything herein to the contrary, the Custodian and Issuer shall have all of the rights (including the indemnification rights), benefits, privileges and immunities under this Agreement as are granted to Issuer under the Bond Indenture, all of which are incorporated, mutatis mutandis, into this Agreement.

Section 14. Patriot Act. MSCG and PPA Buyer acknowledge that the Custodian is subject to federal laws, including the Customer Identification Program ("CIP") requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Custodian must obtain, verify and record information that allows the Custodian to identify MSCG and PPA Buyer. Accordingly, prior to opening the Assigned PPA Payments Account described in Section 4 of this Agreement, the Custodian will ask MSCG and PPA Buyer to provide certain information including but not limited to name, physical address, tax identification number and other information that will help the Custodian identify and verify MSCG's and PPA Buyer's identities, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying

information. MSCG and PPA Buyer agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies MSCG's and PPA Buyer's identities in accordance with its CIP.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

[PPA BUYER]

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

MORGAN STANLEY CAPITAL GROUP INC.

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

[CUSTODIAN]

By:_____
Name: _____
Title: _____

EXHIBIT A

ASSIGNED PPAS

[To come.]

EXHIBIT B

NOTICE INFORMATION

[To come.]

TRUST INDENTURE

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

[TRUSTEE],
as Trustee

$[_____]
[Energy Project Revenue Bonds
Series 2021A]

Dated as of [_____] 1, 2021

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of [_____] 1, 2021 (this *"Indenture"*), is by and between California Community Choice Financing Authority, a joint powers authority and public entity of the State of California (the *"Issuer"*) and [TRUSTEE], as trustee (the *"Trustee"*).

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of the Act (capitalized terms used herein and not otherwise defined shall have the meanings given such terms in Section 1.01 hereof), Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (each a "*Member*" and, collectively, the "*Members*") entered into a joint powers agreement pursuant to which the Issuer was organized and established for the purpose, among other things, of entering into contracts for electricity and energy services and agreements for services to facilitate the sale and purchase of electricity and other related services, and for issuing bonds to assist the Members in financing such contracts, agreements, purchases, sales and services; and

WHEREAS, the Issuer is authorized under the Act to acquire electricity and energy services and enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to issue revenue bonds to finance the cost of acquisition of such electricity and energy services and other agreements, and is vested with all powers necessary to accomplish the purposes for which it was created; and

WHEREAS, the Issuer has determined to finance the Cost of Acquisition of the Energy Project through the issuance of Bonds pursuant to this Indenture; and

WHEREAS, the execution and delivery of this Indenture has been in all respects duly and validly authorized and approved by resolution of the Board of the Issuer; and

WHEREAS, the Trustee is willing to accept the trusts provided for in this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, and the Issuer and the Trustee agree as follows for the benefit of the other, for the benefit of the Holders of the Bonds issued pursuant hereto and the other parties secured hereby:

GRANTING CLAUSES

FOR AND IN CONSIDERATION OF the premises, the mutual covenants of Issuer and the Trustee herein, the purchase of the Bonds by the Holders thereof and the obligations of the Interest Rate Swap Counterparty under the Interest Rate Swap, and in order to secure:

(i) the payment of the principal of and premium, if any, and interest on the Bonds and the payment of the Interest Rate Swap Payments, in each case according to the tenor and effect of the Bonds and the Interest Rate Swap, and

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

Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of Issuer in and to the Trust Estate, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, and all other rights hereinafter granted for the further securing of the Bonds;

FOR AND IN CONSIDERATION OF the obligations of the Commodity Swap Counterparty under the Commodity Swap and the mutual covenants of Issuer and Commodity Swap Counterparty thereunder, and in order to secure the payment of the Commodity Swap Payments, Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of Issuer in the Commodity Swap Payment Fund and the amounts on deposit therein;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby and hereafter conveyed and assigned, or agreed or intended so to be, to the Trustee and its respective successors in said trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of (i) all Holders of the Bonds without privilege, priority or distinction as to the lien or otherwise of any Bond over any other Bond or the payment of interest with respect to any Bond over the payment of interest with respect to any other Bond, except as otherwise provided herein, and (ii) the Interest Rate Swap Counterparty; and

PROVIDED, HOWEVER, that if Issuer, its successors or assigns shall well and truly pay, or cause to be paid, the principal or Redemption Price, if any, on the Bonds and the interest due or to become due thereon, the Commodity Swap Payments and the Interest Rate Swap Payments, at the times and in the manner provided in the Bonds, the Commodity Swap and the Interest Rate Swap, respectively, according to the true intent and meaning thereof, and shall cause the payments to be made into the Funds as required hereunder, or shall provide, as permitted hereby, for the payment thereof as provided in Section 12.01, and shall well and truly keep and perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments or provisions for such payments by Issuer, the Bonds, the Commodity Swap and the Interest Rate Swap shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of Issuer to the Holders of such Bonds shall thereupon cease, terminate and be discharged and satisfied; otherwise this Indenture shall remain in full force and effect.

The terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all Persons who from time to time shall be or become the Holders thereof, and the trusts and conditions upon which the Revenues, moneys, securities and funds held or set aside under this Indenture, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, are to be held

and disposed of, which said trusts and conditions the Trustee hereby accepts, and the respective parties hereto covenant and agree, are as follows:

ARTICLE I

DEFINITIONS AND GOVERNING LAW

Section 1.01. Definitions. The following terms shall, for all purposes of this Indenture, have the following meanings:

"*Account*" or "*Accounts*" means, as the case may be, each or all of the Accounts established in Sections 4.15 and 5.02.

"*Accountant's Certificate*" means a certificate signed by an independent certified public accountant or a firm of independent certified public accountants, selected by Issuer, who may be the accountant or firm of accountants who regularly audit the books of Issuer and must be identified upon selection in writing to the Trustee.

"*Act*" means the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time.

"*Administrative Fee Fund*" means the Administrative Fee Fund established in Section 5.02.

"*Alternate Liquidity Facility*" means a Liquidity Facility for a Series of Bonds delivered to the Trustee in substitution for a Liquidity Facility then in effect with respect to such Bonds.

"*Amortized Value*" means, with respect to any Bond to be redeemed while bearing interest at a Term Rate, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated by a major market maker in municipal securities, as the quotation agent, selected by Issuer, based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond's original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV; *provided* that in the case of a redemption of the Series 2021A Bonds pursuant to Section 4.03(b), the Amortized Value of the Series 2021A Bonds shall be the percentage of the principal amount thereof for the applicable redemption date set forth in Section 4.03(b).

[DISCUSS INDEX BONDS/REPLACE LIBOR]"*Applicable Factor*" means (a) with respect to the initial issuance of a Series of Bonds bearing interest at a LIBOR Index Rate, the percentage or factor of LIBOR determined by the Underwriter and specified in the Index Rate Determination Certificate for such Series of Bonds, or (b) with respect to a Series of Bonds for which the Interest Rate Period is being converted to a LIBOR Index Rate Period (including a

change in such Interest Rate Period from one LIBOR Index Rate Period to another LIBOR Index Rate Period and which may include a percentage or factor to be applied to LIBOR other than the percentage set forth in clause (a)), the percentage or factor of LIBOR determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate, *provided* that Issuer delivers to the Trustee a Favorable Opinion of Bond Counsel addressing the selection of such percentage or factor. The Applicable Factor shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a) and included in the applicable Index Rate Determination Certificate, and once determined shall remain in effect for the duration of the applicable LIBOR Index Rate Period.

"*Applicable Spread*" means, with respect to a Series of Bonds for which the Initial Interest Rate Period is an Index Rate Period, or for any Series of Bonds for which the Interest Rate Period is converted to an Index Rate Period, the margin or spread, which may be positive or negative, determined by the Underwriter or the Remarketing Agent, respectively, on or prior to the Issue Date or Conversion Date for such Bonds, as applicable, and specified in the applicable Supplemental Indenture or Index Rate Determination Certificate, as applicable, which shall be added to the applicable Index to determine the Index Rate. The Applicable Spread shall remain constant for the duration of the applicable Index Rate Period. The Applicable Spread shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a) and included in the applicable Index Rate Determination Certificate.

"*Applicable Tax Exempt Municipal Bond Rate*" means, for the Bonds of any maturity, the "Comparable AAA General Obligations" yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable, as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations" yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the "Comparable AAA General Obligations" yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date or Mandatory Purchase Date, as applicable, of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding on all parties in the absence of manifest error and may be conclusively relied upon in good faith by the Trustee.

"*Assignment Payment*" means any payment received from the Energy Supplier in connection with an assignment of the Energy Purchase Agreement to a replacement energy supplier.

"*Assignment Payment Fund*" means the Assignment Payment Fund established in Section 5.02.

"*Attesting Party*" means an individual authorized by a resolution of the Board to attest the signatures of Authorized Officers.

"*Authorized Denominations*" means with respect to any (a) Term Rate Period or Index Rate Period, $5,000 and any integral multiple thereof, and (b) Commercial Paper Interest Rate Period, Daily Interest Rate Period or Weekly Interest Rate Period, $100,000 and any integral multiple of $1,000 in excess of $100,000.

"*Authorized Newspaper*" means *The Wall Street Journal* or *The Bond Buyer* or any other newspaper or journal printed in the English language and customarily published on each Business Day devoted to financial news and selected by Issuer, with the approval of the Trustee, whose decision shall be final.

"*Authorized Officer*" means (a) the Treasurer/Controller of the Issuer, and (b) any other person or persons designated by the Board by resolution to act on behalf of the Issuer under this Indenture. The designation of such person or persons shall be evidenced by a Written Certificate of the Issuer delivered to a Responsible Officer of the Trustee containing the specimen signature of such person or persons and signed on behalf of the Issuer by its Treasurer/Controller. Such designation as an Authorized Officer shall remain in effect until a Responsible Officer of the Trustee receives actual written notice from the Issuer to the contrary, accompanied by a new certificate.

"*Beneficial Owner*" means, with respect to Bonds registered in the Book Entry System, any Person who acquires a beneficial ownership interest in a Bond held by the Securities Depository, and the term "*Beneficial Ownership*" shall be interpreted accordingly.

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

"*Board*" means the Board of Directors of Issuer, or if said Board is abolished, the board, body, commission or agency succeeding to the principal functions thereof or to whom the power and duties granted or imposed by this Indenture are given by law, and which shall be identified in a Written Notice of Issuer delivered to the Trustee.

"*Bond*" or "*Bonds*" means any of the Bonds and Refunding Bonds authorized by Section 2.01.

"*Bond Counsel*" means Orrick, Herrington & Sutcliffe LLP or any other counsel of nationally recognized standing in matters pertaining to the tax exempt status of interest on

obligations issued by states and their political subdivisions and instrumentalities, duly admitted to the practice of law before the highest court of any state of the United States, and selected by Issuer.

"*Bond Payment Date*" means each date on which (a) interest on the Bonds is due and payable, (b) an Interest Rate Swap Payment is due, or (c) principal of the Bonds is payable at maturity or pursuant to Sinking Fund Installments.

"*Bond Purchase Fund*" means the fund by that name established pursuant to Section 4.15(a), including the Remarketing Proceeds Account and Issuer Purchase Account therein.

"*Bond Registrar*" means the Trustee and any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by Issuer to perform the duties of Bond Registrar under this Indenture.

"*Bondholder*" or "*Holder of Bonds*" or "*Holder*" or "*Owner*" means any Person who shall be the registered owner of any Bond or Bonds.

"*Book Entry System*" means the system maintained by the Securities Depository and described in Section 3.09.

"*Business Day*" means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the city in which is located the designated corporate trust office of the Trustee, the Custodian or a Calculation Agent or the operational offices of Issuer are authorized by law or executive order to close, (c) a day on which the New York Stock Exchange, Inc. is closed, (d) a day on which the payment system of the Federal Reserve System is not operational, (e) for purposes of determining the SIFMA Index Rate, any day that SIFMA recommends that the fixed income departments of its members be closed for purposes of trading in United States government securities, and (f) for purposes of determining the LIBOR Index Rate, any day on which dealings in deposits in United States dollars are not transacted in the London interbank market.

"*Calculation Agent*" means, with respect to any Series of Bonds bearing interest at an Index Rate, the Calculation Agent with respect to such Bonds appointed by Issuer, with written notice to the Trustee, pursuant to the applicable Calculation Agent Agreement and the Indenture. [The initial Calculation Agent for the Series 2021A Bonds shall be [Trustee]].

"*Calculation Agent Agreement*" means, with respect to any Series of Bonds bearing interest at an Index Rate, such agreement as is entered into by the applicable Calculation Agent and Issuer with respect to such Bonds providing for the determination of the applicable Index Rate in accordance with Section 2.09 or Section 2.14, as applicable.

"*Call Option Notice*" has the meaning set forth in Section 2.2(b) of the Receivables Purchase Provisions.

"*Call Receivable*" has the meaning set forth in Section 1.1 of the Receivables Purchase Provisions.

"*Call Receivables Offer*" has the meaning set forth in Section 2.2(a) of the Receivables Purchase Provisions.

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

"*Commercial Paper Interest Rate Period*" means, with respect to a Series of Bonds, each period comprised of CP Interest Terms for the Bonds of such Series, during which CP Interest Term Rates are in effect for such Bonds.

"*Commodity Swap*" means the ISDA Master Agreement, Schedule and Confirmation between Issuer and the Commodity Swap Counterparty, or any replacement agreement permitted by Section 2.12(b), pursuant to which Issuer will pay to the Commodity Swap Counterparty an index based floating price and the Commodity Swap Counterparty will pay to Issuer a fixed price in relation to the quantities of Energy to be delivered under the Energy Purchase Agreement.

"*Commodity Swap Counterparty*" means [Royal Bank of Canada] and its successors and assigns and the counterparty to any replacement Commodity Swap that meets the requirements of Section 2.12(b).

"*Commodity Swap Mandatory Termination Event*" has the meaning set forth in Section 2.12(c)(iii).

"*Commodity Swap Payment Fund*" means the Commodity Swap Payment Fund established in Section 5.02.

"*Commodity Swap Payments*" means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to the Commodity Swap Counterparty by Issuer (including any such amount paid to the Custodian pursuant to Section 3 of the Issuer Custodial Agreement).

"*Commodity Swap Receipts*" means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to Issuer by the Commodity Swap Counterparty.

"*Contract Price*" has the meaning assigned to such term in the Energy Supply Contracts.

"*Conversion*" means (a) a conversion of a Series of Bonds from one Interest Rate Period to another Interest Rate Period and (b) with respect to a Series of Bonds bearing interest at an Index Rate, the establishment of a new Index, a new Index Rate and/or a new Index Rate Period. A Conversion may occur only on a Mandatory Purchase Date.

"*Conversion Date*" means the effective date of a Conversion of a Series of Bonds and shall occur only on a Mandatory Purchase Date.

"Cost of Acquisition" means all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing Energy Project, including:

(a) the amount of the prepayment required to be made by Issuer under the Energy Purchase Agreement;

(b) the amount for deposit into the Capitalized Interest Subaccount of the Debt Service Account for capitalized interest on the Bonds, with such interest being calculated in accordance with the definition of "Debt Service;"

(c) the costs and expenses incurred in the issuance and sale of the Bonds, including, without limitation, legal, financial advisory, accounting, engineering, consulting, municipal advisory, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds and preparation of this Indenture;

(d) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of Energy Project;

(e) the allowance for working capital requirements of Issuer with respect to Energy Project in such amounts as shall be deemed reasonably necessary by Issuer; and

(f) with respect to any Series of Refunding Bonds, the amounts necessary to purchase, redeem and discharge Bonds being refunded, including the payment of the Purchase Price or the Redemption Price of such Bonds, any necessary deposits to the Debt Service Account, and all other costs and expenses incurred in connection with such Series of Refunding Bonds, including the costs and expenses described in (d) and (e) above.

"CP Interest Term" means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, each period established in accordance with Section 2.08 during which a CP Interest Term Rate is in effect for the Bonds of such Series.

"CP Interest Term Rate" means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, an interest rate established periodically for each CP Interest Term in accordance with Section 2.08.

"CP Mandatory Purchase Date" means (i) each Mandatory Purchase Date and (ii) the day next succeeding the last day of each CP Interest Term.

"CPI" means, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (*"CPI"*), published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor (*"BLS"*) and reported on Bloomberg CPURNSA or any successor service (*"Bloomberg CPURNSA"*). If such index is not then reported by such source but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such Month using a source it deems to be accurate and appropriate.

[CONFIRM USE OF CPI INDEX RATE] "CPI Index Rate Formula" means (CPIt — CPIt-12) / CPIt-12

Where:

CPIt = CPI for the applicable Reference Month;

CPIt-12 = CPI for the twelfth month prior to the applicable Reference Month; and

All values used in the CPI Index Rate Formula will be truncated to six decimal places and rounded to the nearest fifth decimal place (one hundred thousandth of a percentage point), rounding upwards if the sixth decimal place is five or greater (*e.g.*, 9.876555% (or .09876555) would be rounded up to 9.87656% (or .0987656) and 9.876554% (or .09876554) would be rounded down to 9.87655% (or .0987655)). All percentages resulting from any calculation of the interest rate will be truncated to four decimal places and rounded to the nearest third decimal place (one thousandth of a percentage point), rounding upwards if the fourth decimal place is five or greater (*e.g.*, 9.8765% (or .098765) would be rounded up to 9.877% (or .09877) and 9.8764% (or .098764) would be rounded down to 9.876% (or .09876)). All dollar amounts used in or resulting from such calculation on Bonds bearing interest at the CPI Index Rate will be rounded to the nearest cent (with one-half cent being rounded upward).

If the sum of (a) the CPI Index Rate Formula and (b) the Applicable Spread on any CPI Index Rate Reset Date yields a number equal to or less than zero, the interest rate on such CPI Index Rate Bonds shall be 0.00% (zero percent) for the applicable month.

"*CPI Index Rate*" means the interest rate per annum determined by the Calculation Agent equal to the sum of (a) the result of the CPI Interest Rate Formula, plus (b) the Applicable Spread, as set forth in Section 2.14.

"*CPI Index Rate Period*" means, with respect to a Series of Bonds, each period during which a CPI Index Rate is in effect for such Bonds.

"*CPI Index Rate Reset Date*" means, the first Business Day of each calendar month.

"*CPI Interest Period*" means the period from and including a CPI Index Rate Reset Date, to but excluding the next following CPI Index Rate Reset Date.

"*Custodial Agreements*" means, collectively, the Energy Supplier Custodial Agreement and the Issuer Custodial Agreement.

"*Custodian*" means [Trustee], as Custodian under the Custodial Agreements and its successors and assigns.

"*Daily Interest Rate*" means, with respect to a Series of Bonds, the final daily interest rate for such Bonds determined by the Remarketing Agent by 11:00 a.m. New York City time pursuant to Section 2.05.

"*Daily Interest Rate Period*" means, with respect to a Series of Bonds, each period during which a Daily Interest Rate is in effect for such Bonds.

"*Debt Service*" means with respect to any Outstanding Bonds, for any particular period of time, an amount equal to the sum of:

(a) all interest payable during such period on such Bonds, but excluding any interest that is to be paid from Bond proceeds on deposit in the Debt Service Account, plus

(b) the Principal Installments payable during such period on such Bonds, calculated on the assumption that, on the day of calculation, such Bonds cease to be Outstanding by reason of, but only by reason of, payment either upon maturity or application of any Sinking Fund Installments required by this Indenture;

provided that [(i)] the interest on any Bonds with a related Interest Rate Swap shall be calculated on the basis of the fixed interest rate payable by Issuer under the Interest Rate Swap[, and (ii) principal and interest due on the first day of a Fiscal Year shall be deemed to have been payable and paid on the last day of the immediately preceding Fiscal Year].

"*Debt Service Account*" means the Debt Service Account in the Debt Service Fund established in Section 5.02.

"*Debt Service Fund*" means the Debt Service Fund established in Section 5.02.

"*Debt Service Fund Agreement*" means any debt service fund agreement among the Trustee, Issuer and a provider, or between Issuer and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund.

"*Debt Service Fund Agreement Guaranty*" means any unconditional guaranty, in favor of Issuer and the Trustee, guarantying the obligations of the provider under any Debt Service Fund Agreement.

"*Defaulted Interest*" has the meaning given to such term in Section 3.08.

"*Defeasance Securities*" means (a) Government Obligations and (b) to the extent that such deposits or certificates of deposit are Qualified Investments, deposits in interest-bearing time deposits or certificates of deposit which shall not be subject to redemption or repayment prior to their maturity or due date other than at the option of the depositor or holder thereof or as to which an irrevocable notice of redemption or repayment, or irrevocable instructions have been given to call for redemption or repayment, of such time deposits or certificates of deposit on a specified redemption or repayment date has been given and such time deposits or certificates of deposit are not otherwise subject to redemption or repayment prior to such specified date other than at the

option of the depositor or holder thereof, and which are fully secured by Government Obligations to the extent not insured by the Federal Deposit Insurance Corporation.

"*Depository*" means any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by Issuer as a depository of moneys and securities held under the provisions of this Indenture, and may include the Trustee.

"*Dissemination Agent*" means that certain dissemination agent appointed by Issuer, pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent appointed by Issuer in accordance with the Continuing Disclosure Undertaking.

"*DTC*" means The Depository Trust Company, New York, New York, and its successors and assigns.

"*Early Termination Payment Date*" has the meaning given to such term in Section 17.4(d) of the Energy Purchase Agreement.

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

"*Energy Project*" means Issuer's purchase of Energy pursuant to the Energy Purchase Agreement and related contractual arrangements and agreements, and the purchase of any Energy to replace Energy not delivered as required pursuant to the Energy Purchase Agreement.

"*Energy Purchase Agreement*" means the Prepaid Energy Sales Agreement, dated as of [_____] between Issuer and the Energy Supplier.

"*Energy Remarketing Reserve Fund*" means the Energy Remarketing Reserve Fund in established in Section 5.02.

"*Energy Supplier*" means Morgan Stanley Energy Structuring, L.L.C.

"*Energy Supplier Custodial Agreement*" means the Custodial Agreement dated as of the Initial Issue Date among the Commodity Swap Counterparty, the Energy Supplier, the Trustee and the Custodian.

"*Energy Supplier Guaranty*" means the Morgan Stanley Guarantee, as defined in the Energy Purchase Agreement.

"*Electronic Means*" means the following communication methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by a Responsible Officer of the Trustee as available for use in connection with its services hereunder.

"*Eligible Bonds*" means any Bonds other than Bonds which a Responsible Officer of the Trustee actually knows to be owned by, for the account of, or on behalf of Issuer or a Project Participant.

"*EMMA*" means the Electronic Municipal Market Access system, the website currently maintained by the Municipal Securities Rulemaking Board and any successor municipal securities disclosure website approved by the Securities and Exchange Commission.

"*Event of Default*" has the meaning given to such term in Section 8.01.

"*Extraordinary Expenses*" means extraordinary and nonrecurring expenses. Termination payments under the Commodity Swap shall not be considered an Extraordinary Expense.

"*Failed Remarketing*" means, (a) with respect to the Bonds on any Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) with respect to the Bonds (i) if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, Issuer has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of such existing Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date.

"*Favorable Opinion of Bond Counsel*" means an Opinion of Bond Counsel to the effect that an action proposed to be taken is not prohibited by this Indenture and will not adversely affect the tax exempt status of interest on the applicable Bonds.

"*Fiduciary*" or "*Fiduciaries*" means the Trustee, the Paying Agents, the Bond Registrar, the Calculation Agents, the Custodian, the tender agent or any or all of them, as may be appropriate.

"*Final Fixed Rate Conversion Date*" means, with respect to a Series of Bonds, the date on which such Bonds begin to bear interest for a Term Rate Period which extends to the Final Maturity Date for such Series of Bonds.

"*Final Maturity Date*" means (a) with respect to the Series 2021A Bonds, [_____ 1, 20__] and (b) with respect to any other Series of Bonds, the final Maturity Date set forth in the related Supplemental Indenture.

"*Fiscal Year*" means (a) the twelve-month period beginning on January 1 of each year and ending on the next December 31, or (b) such other twelve-month period established by Issuer from time to time, upon Written Notice to the Trustee, as its fiscal year.

"*Fitch*" means Fitch Ratings, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.

"Fund" or *"Funds"* means, as the case may be, each or all of the Funds established in Section 5.02 and Section 4.15.

"General Reserve Fund" means the General Reserve Fund established in Section 5.02.

"Government Obligations" means:

(a) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, obligations unconditionally guaranteed as to principal and interest by the United States of America, and evidences of ownership interests in such direct or unconditionally guaranteed obligations; or

(b) Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which: (i) are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice; (ii) are rated in the two highest Rating Categories of S&P and Moody's; and (iii) are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in clause (a) above, which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable notice, as appropriate; [or

(c) Any other bonds, notes or obligations of the United States of America or any agency or instrumentality thereof which, if deposited with the Trustee for the purpose described in Section 12.01(c), will result in a rating on the Bonds which are deemed to have been paid pursuant to Section 12.01(c) that is in the same Rating Category of the obligations listed in subsection (a) above.]

However, the Trustee shall have no responsibility for monitoring any ratings or determining whether any bond, note or other obligation is or continues to be a Government Obligation.

"Indenture" means this Trust Indenture as from time to time amended or supplemented by Supplemental Indentures in accordance with the terms hereof.

"Index" means the LIBOR Index (or a replacement Index for the LIBOR Index specified in a Supplemental Indenture), the SIFMA Index or CPI, as applicable.

"Index Rate" means a LIBOR Index Rate (or a replacement Index Rate for the LIBOR Index Rate specified in a Supplemental Indenture), a SIFMA Index Rate or a CPI Index Rate, as applicable.

"Index Rate Determination Certificate" means a Written Certificate delivered by Issuer in the form of *Exhibit B* hereto pursuant to Section 2.09(b)(i) or Section 2.14(b)(i).

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

"*Index Rate Reset Date*" means, with respect to a Series of Bonds bearing interest at an Index Rate, each date on which the applicable Index Rate is determined by the Calculation Agent based on the change in the applicable Index as of such date, which shall be the date or dates so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate Period (including, by way of example and not limitation, Wednesday of each week, the first Business Day of each calendar month or the first Business Day of a calendar quarter).

"*Index Rate Tender Date*" means, with respect to any Index Rate Period for a Series of Bonds, the date so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate, which date shall be the next-occurring Mandatory Purchase Date, which shall be a date not later than the Final Maturity Date. The Index Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a Business Day is specified as an Index Rate Tender Date, then the Index Rate Tender Date shall be the Business Day immediately following such specified date.

"*Initial Interest Rate Period*" means, with respect to the Series 2021A Bonds, the period from the Initial Issue Date to and including [_____, 20__]; *provided* that in the event that the Series 2021A Bonds are redeemed (or purchased in lieu of redemption) pursuant to Section 4.03, the Initial Interest Rate Period shall end on and as of the day of such redemption or purchase.

"*Initial Issue Date*" means the date of initial issuance and delivery of the Series 2021A Bonds.

"*Initial Mandatory Purchase Date*" means [_____, 20__], which is the day following the last day of the Initial Interest Rate Period for the Series 2021A Bonds.

"*Interest Payment Date*" means, with respect to any Bond (a) during any Daily Interest Rate Period, Weekly Interest Rate Period or Index Rate Period for such Bond, the first Business Day of each Month, (b) during any Term Rate Period for such Bond, each [_____] 1 and [_____] 1, *provided* that the first interest payment made for any Term Rate Period shall be at least 90 days from the first day of such period, (c) during any Commercial Paper Interest Rate Period for such Bond, the day next succeeding the last day of each CP Interest Term, (d) any redemption date for such Bond, (e) any Mandatory Purchase Date for such Bond, and (f) the Maturity Date of such Bond.

"*Interest Rate Determination Certificate*" means a certificate of Issuer delivered to the Trustee no later than 30 days prior to the effective date of the new Interest Rate Period, setting forth the next occurring Mandatory Purchase Date and, for each Series of the Series 2021A Bonds, the applicable Interest Rate Period, maturities and redemption provisions, and (i) for Bonds bearing interest at a Term Rate, the interest rate(s) for such Bonds and (ii) for Bonds bearing interest at an Index Rate, the Index, the CPI, the Index Rate Reset Date, the Applicable Spread, the CPI Interest Period and the Applicable Factor for such Bonds.

"*Interest Rate Period*" means a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period. Notwithstanding anything contained herein to the contrary, all Bonds of a Series shall at all times bear interest for the same Interest Rate Period. All Interest Rate Periods for all Series of Bonds shall terminate on the first to occur of the day prior to (a) the next occurring Mandatory Purchase Date or (b) the Final Maturity Date.

"*Interest Rate Swap*" means (a) the ISDA Master Agreement, the Schedule thereto and each Confirmation thereunder between Issuer and the Interest Rate Swap Counterparty, pursuant to which Issuer agrees to make payments to the Interest Rate Swap Counterparty at a fixed rate of interest and the Interest Rate Swap Counterparty agrees to make payments to Issuer at a floating rate equal to the rate of interest borne by a related Series of Variable Rate Bonds, in each case with a notional amount equal to the Outstanding principal amount of such Series of Bonds, and (b) any replacement interest rate swap agreement permitted by Section 2.13(b) ; *provided that*, as long as no Interest Rate Swap has been entered into by Issuer, all references herein to the Interest Rate Swap, Interest Rate Swap Counterparty, Interest Rate Swap Receipts and Interest Rate Swap Payments (including, without limitation, Section 7.15) shall be disregarded.

"*Interest Rate Swap Counterparty*" means the counterparty to the Interest Rate Swap or replacement Interest Rate Swap, and any successor and assign thereof, that meets the requirements of Section 2.13(b).

"*Interest Rate Swap Payments*" means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the Interest Rate Swap Counterparty by Issuer.

"*Interest Rate Swap Receipts*" means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to Issuer by the Interest Rate Swap Counterparty.

"*Internal Revenue Code*" means the Internal Revenue Code of 1986, as amended. References herein to sections of the Internal Revenue Code include the applicable U.S. Treasury Regulations promulgated thereunder.

"*Issue Date*" means (a) with respect to the Series 2021A Bonds, the Initial Issue Date, and (b) with respect to any other Series of Bonds, the date of initial issuance and delivery of such Series.

"*Issuer*" means California Community Choice Financing Authority, a joint powers authority organized pursuant to the laws of the State of California, including without limitation, the Act.

"*Issuer Custodial Agreement*" means the Custodial Agreement dated as of the Initial Issue Date among the Commodity Swap Counterparty, Issuer, [the Trustee] and the Custodian.

"*Issuer Purchase Account*" means the Account by that name in the Bond Purchase Fund.

[DISCUSS LIBOR SUBSTITUTION] ["LIBOR" means, (a) with respect to the initial issuance of a Series of Bonds bearing interest at a LIBOR Index Rate, the Intercontinental Exchange London interbank offered rate for United States dollar deposits for the applicable LIBOR Period, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on the second Business Day preceding the Issue Date for such Series of Bonds, and (b) for each Index Rate Reset Date, the Intercontinental Exchange London interbank offered rate for United States dollar deposits for the applicable LIBOR Period, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on the second Business Day preceding such Index Rate Reset Date. If such rate is not then reported by such source or otherwise ceases to be available as of any Index Rate Reset Date, then "LIBOR" means a substitute or replacement index designated by Issuer in writing (with notice to, and which is available to, the Calculation Agent) in compliance with Section 2.09(b)(v) ; *provided that* if LIBOR has been permanently discontinued, the Calculation Agent will use, as directed by Issuer, as a substitute for LIBOR and for each future Index Rate Reset Date, the alternative reference rate selected by the central bank, reserve bank, monetary authority or any similar institution (including any committee or working group thereof) that is consistent with accepted market practice (the *"Alternative Rate"*). As part of such substitution, the Calculation Agent will, as directed in writing by Issuer, make such adjustments to the Alternative Rate or the spread thereon, as well as the Business Day convention, Index Rate Reset Dates and related provisions and definitions (*"Adjustments"*), in each case that are consistent with accepted market practice for the use of such Alternative Rate for debt obligations such as the Bonds; provided that in the event that there is no clear market consensus as to whether any rate has replaced LIBOR in customary market usage, Issuer will appoint in its sole discretion an independent financial advisor to determine an appropriate Alternative Rate, and any Adjustments, and the decision of the independent financial advisor will be binding on Issuer, the Calculation Agent and the Bondholders.

"LIBOR Index" means LIBOR.

"LIBOR Index Rate" means, as determined pursuant to Section 2.09(b)(i) for each applicable Index Rate Reset Date, a per annum rate of interest equal to the sum of (a) the Applicable Spread plus (b) the product of (i) the LIBOR Index as of the day of determination multiplied by (ii) the Applicable Factor.

"LIBOR Index Rate Period" means, with respect to a Series of Bonds, each period during which such Bonds bear interest at a LIBOR Index Rate.

"LIBOR Period" means, with respect to the Bonds during any LIBOR Index Rate Period, the designated maturity of LIBOR (*e.g.,* one month, three months) so specified in the applicable Supplemental Indenture or the applicable Index Rate Determination Certificate with respect to such LIBOR Index Rate Period.]

"Liquidity Facility" means, with respect to a Series of Bonds, a standby bond purchase agreement, letter of credit or similar facility providing liquidity support for such Series of Bonds and any Alternate Liquidity Facility provided in substitution of the foregoing.

"*Liquidity Facility Provider*" means, with respect to a Liquidity Facility for a Series of Bonds, the commercial bank or other financial institution providing the same and any other commercial bank or other financial institution issuing or providing (or having primary obligation for, or acting as agent for the financial institutions obligated under) an Alternate Liquidity Facility.

"*Mandatory Purchase Date*" means (i) the Initial Mandatory Purchase Date, and (ii) any subsequent date on which Bonds are required to be purchased pursuant to Section 4.13 or Section 4.14, respectively.

"*Maturity Date*" means, with respect to a Series of Bonds, each date upon which principal of such Bonds is due, as set forth in (a) Section 2.02(b) with respect to the Series 2021A Bonds, and (b) the related Supplemental Indenture with respect to any other Series of Bonds.

"*Maximum Lawful Rate*" means the maximum interest rate permitted by applicable law.

"*Maximum Monthly Amount*" has the meaning assigned to such term in the Receivables Purchase Provisions.

"*Maximum Rate*" means the lesser of 12% per annum and the Maximum Lawful Rate.

"*Member*" has the meaning given to such term in the recitals to this Indenture.

"*Minimum Daily Interest Rate*" means, with respect to a Series of Bonds bearing interest at a Daily Rate, the minimum rate determined by the Remarketing Agent by 10:00 a.m. New York City time pursuant to Section 2.05.

"*Month*" means a calendar month.

"*Moody's*" means Moody's Investors Service, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.

"*MWh*" means a megawatt-hour.

"*Net Participant Shortfall Amount*" means, for any Month in which a Project Participant fails to pay the full amount due under its Energy Supply Contract in time for such amount to be credited to the Revenue Fund for application pursuant to Section 5.05(a) and the full amount due by such Project Participant is not otherwise paid by the Energy Supplier pursuant to the Receivables Purchase Provisions, an amount equal to the positive result (if any) of (i) such Project Participant's Payment Deficiency Index Baseline for such Month minus (ii) the greater of (a) such Project Participant's Payment Deficiency Fixed Baseline for such Month, and (b) the actual amount paid by such Project Participant for such Month, *provided* that if the foregoing does not result in a positive number, then no Net Participant Shortfall Amount will exist for such Project Participant for such Month.

"*Operating Expenses*" means, to the extent properly allocable to Energy Project, (a) Issuer's expenses for operation of Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Energy Purchase Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of Issuer's obligations under the Energy Supply Contracts; (b) any other current expenses or obligations required to be paid by Issuer under the provisions of this Indenture (other than Debt Service on the Bonds) or by law or required to be incurred under or in connection with the performance of Issuer's obligations under the Energy Supply Contracts; (c) fees payable by Issuer with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses incurred by Issuer with respect to the Bonds, this Indenture, or the Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by Issuer with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by Issuer, including, without limitation, directors and officers liability insurance. [Commodity Swap Payments,] litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

"*Operating Fund*" means the Operating Fund established in Section 5.02.

"*Opinion of Bond Counsel*" means a written opinion of either Bond Counsel or Special Tax Counsel (or written opinions of both of them) addressed to Issuer and delivered to the Trustee.

"*Opinion of Counsel*" means an opinion signed by an attorney or firm of attorneys (who may be counsel to Issuer) selected by Issuer.

"*Optional Purchase Date*" means any date on which Bonds are to be purchased pursuant to Section 4.11.

"*Outstanding*" when used with reference to Bonds, means as of any date, Bonds theretofore or thereupon being authenticated and delivered under this Indenture except:

(a) Bonds cancelled (or portions thereof deemed to have been cancelled) by the Trustee at or prior to such date;

(b) Bonds (or portions of Bonds) for the payment or redemption of which moneys, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Indenture and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), *provided* that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice as provided in Article IV;

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article III or Section 4.06 or Section 11.06;

(d) Bonds deemed to have been paid as provided in Section 12.01(b); and

(e) Bonds (or portions thereof) deemed to have been purchased pursuant to the provisions of any Supplemental Indenture in lieu of which other Bonds have been authenticated and delivered as provided in such Supplemental Indenture.

"*Outstanding Sold Receivables*" means, in respect of any Project Participant, Call Receivables and Put Receivables that have been sold to the Energy Supplier pursuant to the Receivables Purchase Provisions, together with any interest accrued thereon pursuant to the Receivables Purchase Provisions, less any such Call Receivables, Put Receivables and interest thereon that has been previously paid or repurchased from the Energy Supplier pursuant to the Receivables Purchase Provisions.

"*Participants*" means those broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as Securities Depository.

"*Paying Agent*" means the Trustee, its successors and assigns, and any other bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds, and its successor or successors hereafter appointed in the manner provided in this Indenture.

"*Payment Deficiency Fixed Baseline*" means, for any Month and any Project Participant, the amount such Project Participant would have been required to pay for such Month under its Energy Supply Contract if the Contract Price for such Month had been determined using an Index Price (as defined under its Energy Supply Contract) for such Month equal to the Fixed Price (as defined under the Commodity Swap) for such Month.

"*Payment Deficiency Index Baseline*" means, for any Month and any Project Participant, the amount required to be paid by such Project Participant for such Month under its Energy Supply Contract.

"*Person*" means any and all natural persons, firms, associations, corporations and public bodies.

"*Pledged Funds*" means (a) the Project Fund, (b) the Revenue Fund, (c) the Debt Service Fund, (d) the General Reserve Fund and (e) the Assignment Payment Fund, in each case including the Accounts in each of such Funds.

"*Power Supply Contract*" means (a) each of the contracts for the sale by Issuer of Energy from or attributable to Energy Project to a Project Participant identified on Schedule I, as such contracts may be amended from time to time in accordance with the terms thereof and this Indenture, and (b) any other contract for the sale by Issuer of Energy from or attributable to Energy Project entered into by a Person that becomes a Project Participant in accordance with the assignment and novation requirements set forth in Section 7.10(iv), as such contract may be amended from time to time in accordance with the terms thereof and this Indenture.

"*Prevailing Market Conditions*" means, without limitation, the following factors: existing short term market rates for securities, the interest on which is excluded from gross income for federal income tax purposes or, as applicable, qualifies the issuer thereof to receive Subsidy Payments or similar benefit; indexes of such short term rates; the existing market supply and demand and the existing yield curves for short term and long term securities for obligations of credit quality comparable to the Bonds, the interest on which is excluded from gross income for federal income tax purposes; general economic conditions and financial conditions that may affect or be relevant to the Bonds; and such other facts, circumstances and conditions as the Remarketing Agent, in its sole discretion, shall determine to be relevant to the remarketing of the Bonds at the Purchase Price thereof.

"*Principal Installment*" means, as of any date of calculation, (a) the principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established, or (b) the unsatisfied balance (determined as provided in Section 5.10(c)) of any Sinking Fund Installments due on a certain future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments.

"*Project Administration Fee*" has the meaning assigned to such term in the Energy Supply Contracts.

"*Project Fund*" means the Project Fund established in Section 5.02.

"*Project Participant*" means (a) a Public Agency that is an Energy purchaser under a Power Supply Contract and identified as a "Project Participant" in Schedule I and (b) any other Person that enters into an Energy Supply Contract with Issuer in accordance with the assignment and novation requirements set forth in Section 7.10(iv).

"*Public Agency*" means a state, a governmental or political subdivision of a state and a corporate instrumentality or public corporation of a state or a subdivision of a state, including without limitation any of their departments or agencies, counties, county boards of education, county superintendents of schools, cities, public corporations, public districts, public commissions or joint powers authorities.

"*Purchase Date*" means an Optional Purchase Date or a Mandatory Purchase Date, as the case may be.

"*Purchase Price*" means (a) with respect to any Purchased Bond to be purchased on an Optional Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date plus accrued and unpaid interest thereon, unless such Optional Purchase Date is an Interest Payment Date for such Bond, in which case interest on such Bond shall not be included in the Purchase Price of such Bond but shall be paid to the Owner of such Bond in accordance with the interest payment provisions thereof, (b) except as provided in clause (c) below, with respect to any Purchased Bond to be purchased on a Mandatory Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date, and (c) in the case of a purchase of a Bond bearing interest at a Term Rate pursuant to Section 4.14 with respect to which the new Interest Rate Period commences prior to the day originally established as the last day of the

preceding Term Rate Period, the optional redemption price for such Bond set forth in Section 4.03(b) or in an applicable Supplemental Indenture which would have been applicable to such Bond if the preceding Term Rate Period had continued to the day originally established as its last day. Accrued interest due on any Bonds to be purchased on a Mandatory Purchase Date shall be paid from amounts on deposit in the Debt Service Account of the Debt Service Fund on such date in accordance with Section 5.07.

"Purchased Bonds" means any Bonds required to be purchased on a Purchase Date.

"Put Option Notice" has the meaning set forth in Section 2.1[(a)] of the Receivables Purchase Provisions.

"Put Receivable" has the meaning set forth in Section 1.1 of the Receivables Purchase Provisions.

"Qualified Investments" means any of the following investments, if and to the extent that the same are rated (or whose financial obligations to Issuer receive credit support from an entity rated) at least at the credit rating of the Energy Supplier, or, if the Energy Supplier is not rated, the guarantor of the Energy Supplier (except for (c) below), to the extent rated by such Rating Agency, and are at the time authorized for such purpose by law:

(a) Direct obligations of the United States government or any of its agencies;

(b) Obligations guaranteed as to principal and interest by the United States government or any of its agencies;

(c) Certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the Issuer, and other evidences of deposit at state and federally chartered banks, savings and loan institutions or savings banks, including the Trustee or any of its affiliates (each having the highest short term rating by each Rating Agency then rating the Bonds) deposited and collateralized as required by law;

(d) Repurchase agreements entered into with the United States or its agencies or with any bank, broker dealer or other such entity, including the Trustee and its affiliates, so long as the obligation of the obligated party is secured by a perfected pledge of obligations that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(e) Guaranteed investment contracts, forward delivery agreements, interest rate exchange agreements or similar agreements providing for a specified rate of return over a specified time period; *provided, however*, that guaranteed investment contracts, forward delivery agreements or similar agreements shall meet the conditions set forth in the preamble to this definition of Qualified Investments;

(f) Direct general obligations of a state of the United States, or a political subdivision or instrumentality thereof, having general taxing powers;

(g) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by or on behalf of the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of principal of and interest on such obligations;

(h) Money market funds registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, and having a rating in the highest Rating Category by each Rating Agency at the time of investment, including money market funds of the Trustee and funds for which the Trustee or its affiliates (i) provide investment or other management services and (ii) serve as investment manager, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (A) the Trustee or its affiliate receives or collects fees from such funds for services rendered, and (B) services performed by the Trustee pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliate; or

(i) Any other investments permitted by applicable law for the investment of the funds of Issuer;

provided, that Issuer shall be responsible for monitoring ratings and determining whether any investment made is or continues to be a Qualified Investment, and the Trustee shall have no responsibility whatsoever for monitoring ratings or determining whether any investment is or continues to be a Qualified Investment.

"*Rating Agency*" means Fitch, Moody's or S&P, or any other rating agency so designated in a Supplemental Indenture that, at the time, rates the Bonds.

"*Rating Category*" means one or more of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such rating category or categories by a numerical modifier, a plus or minus, or otherwise.

"*Rating Confirmation*" means written evidence satisfactory to Issuer, so designated in a Written Statement of Issuer delivered to the Trustee, that upon the effectiveness of any proposed action, all Outstanding Bonds will continue to be assigned at least the same or equivalent ratings (including the same or equivalent numerical, plus or minus, or other modifiers within a Rating Category) by each Rating Agency then rating such Outstanding Bonds.

"*Rebate Payments*" means those portions of moneys or securities held in any Fund or Account that are required to be paid to the United States Treasury Department under the requirements of Section 148(f) of the Internal Revenue Code.

"*Receivables Purchase Provisions*" means (i) initially, the provisions set forth in [Exhibit G] to the Energy Purchase Agreement, and (ii) any successor provisions for the purchase and sale of receivables in respect of amounts due and unpaid under the Energy Supply Contracts and provided in a Written Notice of Issuer to the Trustee.

"*Redemption Account*" means the Redemption Account in the Debt Service Fund established in Section 5.02.

"*Redemption Price*" means, with respect to any Bond, the amount payable upon redemption thereof pursuant to such Bond or this Indenture.

"*Reference Month*" means, with respect to each CPI Index Rate Reset Date, the third calendar month preceding such CPI Index Rate Reset Date.

"*Refunding Bonds*" means a Series of Bonds authorized to be issued pursuant to Section 2.01(c) for the sole purposes of refunding or defeasing (in accordance with Article XII) in whole a Series of Bonds then Outstanding, and paying the Cost of Acquisition with respect to such Refunding Bonds.

"*Regular Record Date*" has the meaning given to such term in Section 3.08.

"*Remarketing Agent*" means, with respect to any Series of Bonds, the entity appointed as the remarketing agent for such Series pursuant to the related Remarketing Agreement and, if applicable, the related Supplemental Indenture.

"*Remarketing Agreement*" means, with respect to any Series of Bonds, the remarketing agreement, if any, entered into between Issuer and the Remarketing Agent for such Series of Bonds.

"*Remarketing Proceeds Account*" means the Account by that name within the Bond Purchase Fund.

"*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 Issuer and the Energy Supplier, as the same may be amended in accordance with its terms.

"*Reset Period*" means Initial Reset Period or Reset Period, as the case may be, each as defined in the Re-Pricing Agreement.

"*Responsible Officer*" means, when used with respect to the Trustee, the Custodian or the Calculation Agent, as applicable, any managing director, president, vice president, senior associate, associate or other officer of the Trustee, the Custodian or the Calculation Agent, respectively, within its designated corporate trust office for delivery of notice specified in Section 12.10 (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom

any corporate trust matter is referred at such office because of such person's knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

"Revenue Fund" means the Revenue Fund established in Section 5.02.

"Revenues" means:

(a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by Issuer from or attributable or relating to the ownership and operation of Energy Project, including all revenues attributable or relating to Energy Project or to the payment of the costs thereof received or to be received by Issuer under the Energy Supply Contracts and the Energy Purchase Agreement or otherwise payable to the Trustee for the account of Issuer for the sale and/or transmission of Energy or otherwise with respect to Energy Project;

(b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund;

(c) any Commodity Swap Receipts received by the Trustee on behalf of Issuer; and

(d) any Subsidy Payments received by the Trustee, on behalf of the Issuer, in accordance with Section 3.10 of this Indenture.

provided that, the term "Revenues" shall not include: (u) any Termination Payment pursuant to the Energy Purchase Agreement; (v) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to Section 5.11; (w) amounts paid by the Project Participants in respect of the Project Administration Fee; (x) any Assignment Payment received from the Energy Supplier; (y) Interest Rate Swap Receipts; and (z) payments received from the Energy Supplier pursuant to the Receivables Purchase Provisions [in respect of Call Receivables].

"S&P" means S&P Global Ratings, a division of S&P Global Inc., its successors and assigns, and, if such entity shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by Issuer in a Written Notice delivered to the Trustee.

"Scheduled Debt Service Deposits" means the required monthly deposits to the Debt Service Account in the Debt Service Fund and the required cumulative deposits to the Debt Service Account in the Debt Service Fund in respect of the Debt Service coming due on the Bonds on each Bond Payment Date pursuant to Section 5.05(a)(iii) and as set forth on Schedule II hereto. Schedule II shall be revised (a) by Written Notice of Issuer delivered at the time of its designation

of each subsequent Interest Rate Period, and (b) by each Supplemental Indenture authorizing the issuance of Refunding Bonds.

"*Securities Depository*" means DTC, or its nominee, and its successors and assigns.

"*Series*" means the Series 2021A Bonds and any other Bonds designated as a Series authorized to be issued hereunder pursuant to Section 2.01.

"*Series 2021A Bonds*" means the [Energy Project Revenue Bonds, Series 2021A] authorized to be issued under Section 2.01. ***[NTD: Additional series to be added as necessary, e.g., 2021A-1, 2021A-2, etc.]***

"*SIFMA Index*" means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, *provided, however*, that, with respect to the initial issuance of a Series of Bonds bearing interest at a SIFMA Index Rate, the SIFMA Municipal Swap Index in effect on the Issue Date shall remain in effect until the first Index Rate Reset Date. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by Issuer in compliance with Section 2.09(b)(v).

"*SIFMA Index Rate*" means a per annum rate of interest equal to the sum of (a) the SIFMA Index then in effect, plus (b) the Applicable Spread.

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

"*Sinking Fund Installment*" means, for the Series 2021A Bonds, the amount so designated in Section 4.02, and with respect to any other Series of Bonds, each date, if any, on which such Bonds are subject to mandatory sinking fund redemption as set forth in the applicable Supplemental Indenture.

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

"*Special Tax Counsel*" means Orrick, Herrington & Sutcliffe LLP or any other counsel of nationally recognized standing in matters pertaining to the tax exempt status of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States, and selected by Issuer. Bond Counsel may serve as Special Tax Counsel.

["Specified Project Participant" has the meaning assigned to such term in Section 1.1 of the Receivables Purchase Provisions.]***[NTD: ADD TERM TO RECEIVABLES PURCHASE PROVISIONS?]***

"State" means the State of California.

"*Subsidy Payments*" means (a) with respect to a Series of Bonds issued under [Section 54AA of the Internal Revenue Code, the amounts relating to such Series of Bonds which are payable by the federal government under Section 6431 of the Internal Revenue Code, which the Issuer has elected to receive under Section 54AA(g)(1) of the Internal Revenue Code,] and (b) with respect to a Series of Bonds issued under any other provision of the Internal Revenue Code that creates a substantially similar direct-pay subsidy program, the amounts relating to such Series of Bonds which are payable by the federal government under the applicable provision of the Internal Revenue Code which the Issuer has elected to receive under the applicable provisions of the Internal Revenue Code.

"Supplemental Indenture" means any indenture supplemental to or amendatory of this Indenture executed and delivered by Issuer and the Trustee in accordance with Article X.

"Swap Payment Deficiency" means, as of any date, (a) the amount of the next Commodity Swap Payment expected to become due, minus (b) the amount on deposit in the Commodity Swap Payment Fund; *provided, however*, that if such difference is a negative number, then the Swap Payment Deficiency shall be zero.

"Tax Agreement" means the Tax Certificate and Agreement of Issuer with respect to the Bonds dated as of the Initial Issue Date.

"Term Rate" means, with respect to a Series of Bonds, a fixed interest rate for each maturity of such Bonds established in accordance with Section 2.07.

"Term Rate Conversion Date" means, with respect to a Series of Bonds, the date on which such Bonds begin to bear interest at a Term Rate pursuant to the provisions of Section 2.07, including each date on which a new Term Rate Period is established for such Bonds and the Final Fixed Rate Conversion Date with respect to such Bonds.

"Term Rate Period" means, with respect to a Series of Bonds, each period during which a Term Rate is in effect for such Bonds.

"Term Rate Tender Date" means (a) with respect to the initial Term Rate Period for the Series 2021A Bonds maturing on the Final Maturity Date, the Initial Mandatory Purchase Date, and (b) with respect to any other Term Rate Period for a Series of Bonds, the date so specified in the related Supplemental Indenture or notice of Conversion to or continuation of such Term Rate Period provided by Issuer pursuant to Section 2.07(b), as applicable, which date shall be a Mandatory Purchase Date pursuant to Section 4.13 and shall not be later than the Final Maturity Date for such Series of Bonds. The Term Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a

Business Day is specified as a Term Rate Tender Date, then the Term Rate Tender Date shall be the Business Day immediately following such specified date.

"*Termination Payment*" has the meaning given to such term in the Energy Purchase Agreement.

"*Trust Estate*" means (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of Issuer in, to and under the Energy Supply Contracts, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment (e) all right, title and interest of Issuer in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of Issuer in, to and under the Energy Supplier Guaranty, (g) all right, title and interest of Issuer in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of Issuer in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

"*Trustee*" means [Trustee] and its successor or successors and any other corporation or national banking association which may at any time be substituted in its place pursuant to this Indenture.

"*Undelivered Bond*" means any Bond which constitutes an Undelivered Bond under the provisions of Section 4.16.

"*Underwriter*" means (a) with respect to the Series 2021A Bonds, Morgan Stanley & Co. LLC, and (b) with respect to any other Series of Bonds, the municipal securities broker dealer engaged by Issuer to underwrite such Series of Bonds.

"*Variable Rate Bonds*" means Bonds bearing interest at a Daily Interest Rate, a Weekly Interest Rate, CP Interest Term Rates or an Index Rate.

"*Weekly Interest Rate*" means, with respect to a Series of Bonds, a variable interest rate established for such Bonds in accordance with Section 2.06.

"*Weekly Interest Rate Period*" means, with respect to a Series of Bonds, each period during which a Weekly Interest Rate is in effect for such Bonds.

"*Written Certificate,*" "*Written Direction,*" "*Written Instrument,*" "*Written Notice,*" "*Written Request*" and "*Written Statement*" of Issuer means in each case an instrument in writing signed on behalf of Issuer by an Authorized Officer thereof. Any such instrument and any supporting opinions or certificates may, but need not, be combined in a single instrument with any other instrument, opinion or certificate, and the two or more so combined shall be read and construed so as to form a single instrument. Any such instrument may be based, insofar as it

relates to legal, accounting or engineering matters, upon the opinion or certificate of counsel, consultants, accountants or engineers, unless the Authorized Officer signing such Written Certificate, Direction, Notice, Request or Statement knows, or in the exercise of reasonable care should know, that the opinion or certificate with respect to the matters upon which such Written Certificate, Direction, Notice, Request or Statement may be based, as aforesaid, is erroneous. The same Authorized Officer, or the same counsel, consultant, accountant or engineer, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different Authorized Officers, counsel, consultants, accountants or engineers may certify to different facts, respectively. Every Written Certificate, Direction, Notice, Request or Statement of Issuer, and every certificate or opinion of counsel, consultants, accountants or engineers provided for herein shall include:

(a) a statement that the person making such certificate, direction, notice, request, statement or opinion has read the pertinent provisions of this Indenture to which such certificate, direction, notice, request, statement or opinion relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate, direction, notice, request, statement or opinion is based;

(c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; and

(d) with respect to any statement relating to compliance with any provision hereof, a statement whether or not, in the opinion of such person, such provision has been complied with.

Section 1.02. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Indenture.

Section 1.03. Rules of Construction. Except where the context otherwise requires, words of any gender shall include correlative words of the other genders; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, trusts, corporations or governments or agencies or political subdivisions thereof. The term “include” and its derivations are not limiting.

References herein to contracts and agreements include all amendments or supplements thereto made in accordance with the terms thereof, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof. References herein to Articles, Sections, Exhibits and Schedules are references to the Articles, Sections, Exhibits and Schedules of and to this Indenture.

Section 1.04. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 1.05. Consents. Whenever the consent, notice or direction of the Bondholders, the Energy Supplier, the Commodity Swap Counterparty, the Interest Rate Swap Counterparty or Issuer is required under the terms of this Indenture, such consent, notice or direction, as applicable, shall be evidenced by a written instrument providing for such consent, delivered to the Trustee.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01. Authorization of Bonds and Refunding Bonds; Application of Proceeds.

(a) For the purpose of financing the Cost of Acquisition of Energy Project, the $[_____] [Energy Project Revenue Bonds, Series 2021A], which shall bear interest during the Initial Interest Rate Period at a Term Rate and which shall be entitled to the benefit, protection and security of this Indenture are hereby authorized to be issued. ***[NTD: Other rate modes to be added as necessary.]***

(b) The proceeds of the Series 2021A Bonds shall be deposited with the Trustee and disbursed, transferred and applied as provided in a Written Request of Issuer delivered to the Trustee upon the issuance of the Series 2021A Bonds.

(c) In addition to the Series 2021A Bonds, there are hereby authorized to be issued by Supplemental Indenture one or more Series of Refunding Bonds for the purpose of refunding any Series of Bonds then Outstanding hereunder, subject to the following conditions:

(i) the Supplemental Indenture providing for issuance a Series of Refunding Bonds shall set forth (A) the Bonds to be refunded, (B) the Series designation and aggregate principal amount of the Refunding Bonds, (C) the Maturity Dates (which shall be no later than the Final Maturity Date) and any Sinking Fund Installments for the Refunding Bonds, (D) the Scheduled Debt Service Deposits for such Bonds, (E) the initial Interest Rate Period for such Bonds, and if such Interest Rate Period is to be an Index Rate Period, the applicable Index or CPI, and the Applicable Spread and, if the Index is the LIBOR Index, the Applicable Factor, and (F) such other terms and provisions concerning the Refunding Bonds as are not inconsistent with this Indenture;

(ii) a Series of Refunding Bonds issued in a Term Rate Period may be sold at a premium;

(iii) the proceeds of a Series of Refunding Bonds (including any sale premium) shall be used exclusively to pay the Cost of Acquisition relating to the Refunding Bonds;

(iv) if such Bonds are Variable Rate Bonds, and if such Bonds are to bear interest at a Daily Interest Rate, a Weekly Interest Rate or CP Interest Term Rates, Issuer shall have appointed a Remarketing Agent for such Bonds and shall have entered into an Interest Rate Swap with respect to such Series of Bonds;

(v) the delivery to the Trustee of an Accountant's Certificate verifying ongoing cash flow sufficiency and Termination Payment sufficiency, *provided that* the Trustee shall have no duty or obligation to review the contents thereof and shall receive such Accountant's Certificate solely as a repository on behalf of Bondholders;

(vi) the delivery to the Trustee of the requests, opinions and documents required by Section 2.03(c); and

(vii) the receipt by the Trustee of a Rating Confirmation with respect to any Bonds Outstanding prior to the issuance of such Refunding Bonds that will remain Outstanding after the issuance thereof.

(d) No bonds, other than the Bonds and any Refunding Bonds, may be issued pursuant to this Indenture.

Section 2.02. Terms of Series 2021A Bonds; Payment. (a) The Series 2021A Bonds shall be dated as of the date of the initial authentication and delivery thereof, shall bear interest from such date, payable on each Interest Payment Date, and shall be subject to redemption as provided in Article IV. The principal and Redemption Price of and interest on the Series 2021A Bonds shall be payable by the Trustee at its designated corporate trust office and such banking institution is hereby appointed Paying Agent and Bond Registrar for the Bonds; *provided* that interest on the Bonds may be paid, at the option of Issuer, by check payable to the order of the Person entitled thereto, and mailed by first-class mail, postage prepaid, to the address of such Person as shall appear on the books of the Bond Registrar, which the Bond Registrar shall keep for such purposes at its designated corporate trust office. Upon the written request of any Owner of one million dollars ($1,000,000) or more in aggregate principal amount of Bonds received by the Trustee prior to the Regular Record Date (which shall remain in effect until rescinded in writing by such Owner), interest shall be paid on each Interest Payment Date by wire transfer of immediately available funds to an account maintained in any bank or trust company in the United States of America that is a member of the Federal Reserve System designated in writing by such Owner. The principal and Redemption Price of and interest on all Bonds shall also be payable at any other place which may be provided for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by this Indenture. Issuer shall provide Written Notice to the Trustee of the appointment of any additional Paying Agent.

(b) The Series 2021A 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 2021A Bonds shall be a Term Rate Period, and the Series 2021A Bonds shall bear interest during such Interest Rate Period at the rates, all as set forth below:

MATURITY DATE	PRINCIPAL AMOUNT	INTEREST RATE

[NTD: Additional series to be added as necessary.]

(c) Interest on the Series 2021A Bonds shall be payable to the date on which such Bonds shall have been paid in full. Interest on the Series 2021A Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

(d) The initial interest rates for the Bonds of each Series and the determination for such Bonds of the Daily Interest Rate, the Weekly Interest Rate, the Index Rate or the Term Rate and each CP Interest Term and CP Interest Term Rate by the applicable Calculation Agent or Remarketing Agent for such Bonds, as the case may be, and shall be conclusive and binding upon Issuer, the Trustee, the Remarketing Agent and the Owners of the Bonds.

(e) In connection with any Term Rate Conversion Date of a Series of Bonds, the Sinking Fund Installments, if any, established for such Series pursuant to the applicable Supplemental Indenture may be re designated as Maturity Dates and Sinking Fund Installments for such Bonds on the Term Rate Conversion Date for such Bonds as provided for in the applicable Supplemental Indenture.

Section 2.03. Conditions for Issuance of Bonds. The Bonds of each Series shall be executed by Issuer and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered upon the Written Direction of Issuer, but only upon the receipt by the Trustee of:

(a) A copy, certified by an Authorized Officer, of a resolution and/or evidence of any other official actions taken by Issuer that authorize the execution and delivery of the Bonds, together with a Written Request as to the authentication and delivery of the Bonds, signed by an Authorized Officer;

(b) An Opinion or Opinions of Counsel to the effect that (i) Issuer has the right and power to authorize and enter into this Indenture, the Energy Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap, and (ii) the Energy Supply Contracts, the Energy Purchase Agreement and the Commodity Swap have been duly and lawfully authorized, executed and delivered by Issuer, are in full force and effect and (assuming due authorization, execution and delivery by, and validity and binding effect upon, the other parties thereto) are valid, binding and enforceable upon Issuer in accordance with their respective terms, and no other authorization for the Energy Supply Contracts, the Energy Purchase Agreement, the Commodity Swap or any Interest Rate Swap is required; *provided*, that such Opinion(s) of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, and judicial discretion and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy;

(c) An Opinion of Bond Counsel to the effect that (i) the Bonds constitute the valid and binding limited obligations of Issuer; (ii) this Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, Issuer; (iii) this Indenture creates a valid pledge of the Trust Estate to secure the payment of principal of and interest on the Bonds, of the Revenues and any other amounts (including proceeds of the sale of the Bonds) held by the Trustee in any fund or account established pursuant to this Indenture, except for the Administrative Fee Fund and Rebate Payments held in the Operating Fund, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture; and (iv) the Bonds are not a lien or charge upon the funds or property of Issuer except to the extent of the aforementioned pledge; provided, that such Opinion of Bond Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium reorganization, arrangement, fraudulent conveyance, or other similar laws relating to or affecting creditors' rights generally and judicial discretion and the valid exercise of the sovereign police powers of the State, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases, and may state that no opinion is being rendered as to the availability of any particular remedy under the financing documents;

(d) An opinion of Special Tax Counsel to the effect that, if applicable, interest on the Bonds of such Series is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code and is exempt from State of California personal income taxes (it being agreed that if Special Tax Counsel also serves as Bond Counsel, the opinion described in this clause (d) may be consolidated with the Opinion of Bond Counsel described in the preceding clause (c));

(e) Executed or certified copies of the Energy Supply Contracts with each of the Project Participants specified on Schedule I;

(f) An opinion of counsel to each of the initial Project Participants to the effect that the Energy Supply Contract between such Project Participant and Issuer has been duly authorized, executed and delivered by such Project Participant, is the valid and binding obligation of such Project Participant and is enforceable in accordance with its terms, subject to customary assumptions and exceptions with respect to enforceability, with such exceptions as may be agreed to by Issuer and the Underwriter;

(g) A rating on the Bonds from at least one Rating Agency.

Section 2.04. Initial Interest Rate Period; Subsequent Interest Rate Periods. (a) The Series 2021A Bonds shall be initially issued in the Interest Rate Period set forth in Section 2.02(b). Upon the purchase of the Series 2021A Bonds on a Mandatory Purchase Date, the Interest Rate Period for each Series of the Series 2021A Bonds may be converted to to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, an Index Rate Period, a Term Rate Period or a combination thereof, as provided in this Article II. In the event that two or more Interest Rate Periods are so established, the Series 2021A Bonds shall, by Supplemental Indenture, be divided into separate Series or sub-Series corresponding to such Interest Rate Periods.

(b) In the manner hereinafter provided, the term of each Series of Bonds will be divided into consecutive Interest Rate Periods during each of which such Bonds shall bear interest at the Daily Interest Rate, the Weekly Interest Rate, CP Interest Term Rates, Term Rates or an Index Rate; *provided, however,* that the Interest Rate Period shall be the same for all Bonds of a Series, and no Bond shall bear interest in excess of the Maximum Rate. The Interest Rate Period for any Series 2021A Bonds (other than the Initial Interest Rate Period for the Series 2021A Bonds) shall be established pursuant to the Interest Rate Determination Certificate or related Supplemental Indenture and terminate on the day preceding the next occurring Mandatory Purchase Date.

Section 2.05. Daily Interest Rate Period.

(a) *Determination of Daily Interest Rates*. During each Daily Interest Rate Period for a Series of Bonds, the Bonds of such Series shall bear interest at the Daily Interest Rate, which shall be determined by the Remarketing Agent on or before 11:00 a.m., New York City time, on each Business Day for such Business Day. The Remarketing Agent will advise the Trustee by Electronic Means of the final Daily Interest Rate by 12:00 noon, New York City time, on the day such rate is determined. The Daily Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by the Bonds of the applicable Series, would enable the Remarketing Agent to sell the Bonds of such Series on that Business Day at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. With respect to any day that is not a Business Day, the Daily Interest Rate for that day shall be the same Daily Interest Rate established for the immediately preceding Business Day. In the event the Remarketing Agent fails to establish a Daily Interest Rate for any Business Day, then the Daily Interest Rate for that Business Day shall be the Daily Interest Rate for the immediately preceding Business Day if the Daily Interest Rate for the immediately preceding Business Day was established by the Remarketing Agent. Subject to the

provisions of Section 2.10(d), in the event that the Daily Interest Rate for the immediately preceding Business Day was not determined by the Remarketing Agent, or in the event that the Daily Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the Daily Interest Rate shall be deemed to be equal to the SIFMA Index on the Business Day such Daily Interest Rate would otherwise be determined as provided herein for such Daily Interest Rate Period.

(b) *Conversion to Daily Interest Rate Period*. Subject to Section 2.10, at any time the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at a Daily Interest Rate. Such direction of the Issuer shall specify the proposed effective date of such Conversion to a Daily Interest Rate Period, which shall be a Business Day not earlier than the [30th] day following the second Business Day after receipt by the Trustee of the Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, such direction shall be accompanied by a form of notice required by Section 2.05(c) and the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Daily Interest Rate Period. Upon the Conversion of any Series of Bonds to the Daily Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate borne by such Series of Bonds shall be a Daily Interest Rate as provided in Section 2.05(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. 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) Issuer consents in writing to the sale of the Bonds of such Series at such premium or discount;

(iii) In the case of the Bonds of such Series to be sold at a premium, the Underwriter or the Remarketing Agent, as applicable, shall transfer the amount of such premium to the Trustee for deposit into such Funds and Accounts as shall be specified in a Written Direction of the Issuer;

(iv) On or before the date of determination of the Term Rates for the Bonds of such Series, the Issuer delivers to the Trustee and the Remarketing Agent a form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Term Rate Conversion Date; and

(v) On or before the Conversion Date, a Favorable Opinion of Bond Counsel shall have been delivered.]

Section 2.08. Commercial Paper Interest Rate Periods.

(a) *Determination of CP Interest Terms and CP Interest Term Rates*. During each Commercial Paper Interest Rate Period for a Series of Bonds, each Bond of such Series shall bear interest during each CP Interest Term for such Bond at the CP Interest Term Rate for such Bond. The CP Interest Term and the CP Interest Term Rate for each Bond need not be the same for any two Bonds of such Series, even if determined on the same date. Each of such CP Interest Terms and CP Interest Term Rates for each Bond

shall be determined by the Remarketing Agent no later than the first day of each CP Interest Term. Each CP Interest Term shall be for a period of days within the range or ranges announced as possible CP Interest Terms no later than 9:30 a.m., New York City time, on the first day of each CP Interest Term by the Remarketing Agent. Each CP Interest Term for each Bond of the applicable Series shall be a period of not more than two hundred seventy (270) days, determined by the Remarketing Agent to be the period which, together with all other CP Interest Terms for all Bonds of the applicable Series then Outstanding, will result in the lowest overall interest expense on such Bonds over the next succeeding two hundred seventy (270) days. Each CP Interest Term shall end on either a day which immediately precedes a Business Day or on the day immediately preceding the Final Maturity Date for the applicable Series of Bonds. If, for any reason, a CP Interest Term for any Bond cannot be so determined by the Remarketing Agent, or if the determination of such CP Interest Term is held by a court of law to be invalid or unenforceable, then such CP Interest Term shall be thirty (30) days, but if the last day so determined shall not be a day immediately preceding a Business Day, such CP Interest Term shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the Final Maturity Date for the applicable Series of Bonds, shall end on the day immediately preceding such Final Maturity Date. In determining the number of days in each CP Interest Term, the Remarketing Agent shall take into account the following factors: (i) existing short term, tax exempt market rates and indices of such short term rates; (ii) the existing market supply and demand for short term tax exempt securities; (iii) existing yield curves for short term and long term tax exempt securities for obligations of credit quality comparable to the Bonds of the applicable Series; (iv) general economic conditions; (v) industry economic and financial conditions that may affect or be relevant to the Bonds of the applicable Series; (vi) the CP Interest Terms of other Bonds of the applicable Series; and (vii) such other facts, circumstances and conditions pertaining to financial markets as the Remarketing Agent, in its sole discretion, shall determine to be relevant.

The CP Interest Term Rate for each CP Interest Term for each Bond in a Commercial Paper Interest Rate Period shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by such Bond, would enable the Remarketing Agent to sell such Bond on the effective date of such rate at a price equal to the principal amount thereof. Subject to the provisions of Section 2.10(d), if, for any reason, a CP Interest Term Rate for any Bond in a Commercial Paper Interest Rate Period is not so established by the Remarketing Agent for any CP Interest Term, or if such CP Interest Term Rate is determined by a court of law to be invalid or unenforceable, then the CP Interest Term Rate for such CP Interest Term shall be a rate per annum equal to the SIFMA Index on the first day of such CP Interest Term.

(b) *Conversion to Commercial Paper Interest Rate Period*. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at CP Interest Term Rates. Such Written Direction of the Issuer shall specify (i) the proposed effective date of the Commercial Paper Interest Rate Period, which shall be a Business Day not earlier than the thirtieth (30th) day following the second Business Day after receipt by

the Trustee of such direction, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, the Written Direction of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Commercial Paper Interest Rate Period. Upon Conversion of any Series of Bonds to the Commercial Paper Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, each Bond of such Series shall bear interest at a CP Interest Term Rate applicable to the CP Interest Term then in effect for such Bond, which may differ from the CP Interest Term Rate and CP Interest Term applicable to other Bonds of such Series.

(c) *Notice of Conversion to CP Interest Term Rates*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Commercial Paper Interest Rate Period as provided in Section 2.08(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Commercial Paper Interest Rate Period to the Owners of the Bonds of the applicable Series not less than thirty (30) days prior to the proposed effective date of such Commercial Paper Interest Rate Period. Such notice shall state: (i) that such Bonds shall bear interest at CP Interest Term Rates unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Commercial Paper Interest Rate Period; and (iii) that Bonds of such Bonds are subject to mandatory tender for purchase on such proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(d) *Conversion From Commercial Paper Interest Rate Period*. Subject to Section 2.10(b), at any time during a Commercial Paper Interest Rate Period for a Series of Bonds, the Issuer may elect, pursuant to Section 2.05(b), Section 2.06(b), Section 2.07(b) or Section 2.09(c), that such Bonds no longer shall bear interest at CP Interest Term Rates and shall instead bear interest at a Daily Interest Rate, a Weekly Interest Rate, a Term Rate or an Index Rate, as specified in such election. In connection with any such election, and notwithstanding any provision contained in this Section 2.08 to the contrary, each CP Interest Term established by the Remarketing Agent for the Bonds shall end on the same date in order to facilitate the Conversion of such Bonds. The date on which all CP Interest Terms determined for the Bonds end shall be the last day of the then current Commercial Paper Interest Rate Period and the day next succeeding such date shall be the effective date of the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period or Index Rate Period elected by the Issuer for such Bonds.

Section 2.09. Index Rate Periods.

(a) *Determination of Applicable Spread and Applicable Factor*. In connection with the issuance of a Series of Bonds bearing interest in an Index Rate Period, the Applicable Spread and, if such Index Rate Period is a LIBOR Index Rate Period, the Applicable Factor applicable to such Series of Bonds for the duration of the initial Index Rate Period for such Series of Bonds shall be specified in this Indenture or in the Supplemental Indenture providing for the issuance of such Series of Bonds. In connection with the Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, the Remarketing Agent shall determine the Applicable Spread and, if such Index Rate Period is a LIBOR Index Rate Period, the Applicable Factor applicable to such Bonds for the duration of the applicable Index Rate Period, and shall specify such Applicable Spread and, if applicable, the Applicable Factor and the LIBOR Period selected by the Issuer in the Index Rate Determination Certificate for the applicable Index Rate Period. The Applicable Spread and, if applicable, the Applicable Factor for an Index Rate Period shall each be such amount as shall result in the minimum Index Rate (as a rate of interest per annum) which, if borne by the Bonds of the applicable Series as of the first day of the applicable Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds on the first day of the applicable Index Rate Period at a price (without regard to accrued interest) equal to 100% of the principal amount thereof.

(b) *Determination of Index Rate*.

(i) During each Index Rate Period for a Series of Bonds, such Bonds shall bear interest at an Index Rate, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such Interest Rate Period.

(ii) With respect to each LIBOR Index Rate Period, (A) the Calculation Agent shall determine the LIBOR Index by 11:00 a.m., London time, on the second Business Day preceding the Index Rate Reset Date, and (B) the LIBOR Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. With respect to each SIFMA Index Rate Period, (A) the Calculation Agent shall determine the SIFMA Index by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day on the next succeeding Business Day, and (B) the SIFMA Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. The Calculation Agent shall also calculate and provide to the Issuer and the Trustee the amount of interest due and payable on each Interest Payment Date for the applicable Series of Bonds at least two (2) Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each Index Rate so determined to the Issuer and the Trustee by Electronic Means not later than each Index Rate Reset Date. Upon the written request of any Holder, the Trustee shall confirm the Index Rate then in effect. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in an Index Rate Period will be rounded, if necessary, to the nearest ten thousandth of a percentage point (i.e., to five decimal places) with five hundred thousandths of a percentage

point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on such Bonds while in an Index Rate Period will be rounded to the nearest cent (with one-half cent being rounded upward).

(iii) In determining the interest rate that any Bond shall bear as provided in this Section 2.09, neither the Underwriter nor the Remarketing Agent, as applicable, the Calculation Agent, nor the Trustee shall have any liability to the Issuer or the Holder of such Bond, except for its own negligence or willful misconduct.

(iv) If, during any Index Rate Period, the Index or rate used to determine an Index Rate is not reported by the relevant source at the time necessary for determination of such Index Rate or otherwise ceases to be available, the Issuer or its independent financial advisor (as applicable) shall determine a replacement or substitute Index Rate (as applicable), including any Alternative Rate and any Adjustments, and promptly provide the same via Electronic Means to the Calculation Agent and the Trustee, together with the effective date of the substitute or replacement Index Rate, which substitute or replacement must be consistent with any corresponding substitute or replacement index designated pursuant to the relevant Interest Rate Swap.

(c) *Conversion to or Continuation of Index Rate Period.* Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at an Index Rate. Such direction of the Issuer shall specify the proposed effective date of the Index Rate Period, which date shall be a Business Day not earlier than the 30th day following the second Business Day after receipt by the Trustee of the Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture; (ii) the last day of such Index Rate Period, which day shall be either the day immediately prior to the Final Maturity Date for the applicable Series of Bonds, or a day which immediately precedes a Business Day. In addition, such direction of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Conversion Date.

(d) *Notice of Conversion to or Continuation of Index Rate*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Index Rate Period as provided in Section 2.09(b), the Trustee shall give notice by first-class mail of the Conversion of such Bonds to bear interest in a (or the establishment of another) Index Rate Period for a Series of Bonds to the Owners of the Bonds of such Series not less than thirty (30) days prior to the proposed effective date of such Index Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds shall be converted to, or continue to be, an Index Rate Period unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate

Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the Index Rate Conversion Date; (ii) that such Bonds are subject to mandatory tender for purchase on the Index Rate Conversion Date and setting forth the applicable Purchase Price and the place of delivery for purchase of such Bonds; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

Section 2.10. Notice of Conversion. (a) In the event that the Issuer shall elect to convert the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Term Rate Period, an Index Rate Period or a Commercial Paper Interest Rate Period as provided in this Article II, then the Written Direction of the Issuer required to be delivered to the Trustee by the applicable provision of this Article II shall be given by registered or certified mail, or by Electronic Means.

(b) Notwithstanding anything in this Article II, in connection with any Conversion of the Interest Rate Period for a Series of Bonds, the Issuer shall have the right to deliver to the Trustee and the Remarketing Agent (if any), on or prior to 10:00 a.m., New York City time, on the [third] Business Day preceding the effective date of any such Conversion a Written Direction of the Issuer to the effect that the Issuer elects to rescind its election to make such Conversion. If the Issuer rescinds its election to make such Conversion, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue to bear interest in the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period, Commercial Paper Interest Rate Period or Index Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion, and the Term Rate Tender Date or Index Rate Tender Date, if applicable, for any such Series of Bonds shall also remain unchanged from that in effect immediately prior to such proposed Conversion.

(c) No Conversion of a Series of Bonds from one Interest Rate Period to another, and no continuation or establishment of a new Term Rate Period or Index Rate Period, shall take effect under this Indenture unless each of the following conditions, to the extent applicable, shall have been satisfied:

(i) the Trustee shall have received a Favorable Opinion of Bond Counsel with respect to such Conversion;

(ii) with respect to any Series of Bonds bearing interest at an Index Rate or a Term Rate, no Conversion may occur with respect to such Bonds earlier than (A) the Business Day following the last day of the applicable Interest Rate Period or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture;

(iii) in the case of any Conversion of the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period or a Commercial

Paper Interest Rate Period, prior to the Conversion Date the Issuer shall have appointed a Remarketing Agent and shall have executed and delivered a Remarketing Agreement with respect to such Series of Bonds, and shall have obtained a Liquidity Facility with respect to such Series of Bonds as required by Section 2.11;

(iv) in the case of a Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, prior to the Conversion Date the Issuer shall have appointed a Calculation Agent and executed and delivered a Calculation Agent Agreement with respect to such Series of Bonds; and

(v) the remarketing proceeds available on the Conversion Date shall not be less than the amount required to purchase all of the Bonds of such Series at the applicable Purchase Price (unless the Issuer in its sole discretion elects to transfer to the Trustee the amount of such deficiency on or before the Conversion Date).

(d) If any condition to the Conversion of the Interest Rate Period for a Series of Bonds shall not have been satisfied, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue in the Daily Interest Rate Period, Weekly Interest Rate Period, Index Rate Period, Term Rate Period, or Commercial Paper Interest Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion (provided, that the period of any such continuing Term Rate Period shall be one year), and the Bonds of such Series shall continue to be subject to mandatory tender for purchase on the date which would have been the effective date of the Conversion as provided in Section 4.14.

Section 2.11. Liquidity Facility. In connection with the issuance of any Series of Bonds, or the Conversion of any Series of Bonds, to bear interest in a Daily Interest Rate Period, a Weekly Interest Rate Period, an Index Rate Period 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 Energy Project, Issuer shall enter into the initial Commodity Swap with the Commodity Swap Counterparty. The following shall apply to such Commodity Swap:

(i) The method for the calculation of the Commodity Swap Payments and Commodity Swap Receipts, as applicable, and the scheduled payment dates therefor, are set forth in Schedule III hereto.

(ii) Commodity Swap Payments shall be made by the Trustee (for the account of Issuer) from the Commodity Swap Payment Fund.

(iii) Commodity Swap Receipts shall be payable directly to the Trustee (for the account of Issuer) and shall be deposited directly into the Revenue Fund.

(b) The following shall apply with respect to restrictions on replacement and termination of the Commodity Swap:

(i) Issuer agrees that it will not exercise any right to declare an early termination date under the Commodity Swap unless either (A) Issuer has entered into a replacement Commodity Swap in accordance with clause (ii) or (iii) below, and such replacement Commodity Swap will be effective as of such early termination date and cover price exposure from and after such early termination date, or (B) Issuer causes or permits the termination of the Energy Purchase Agreement prior to or as of such early termination date.

(ii) Issuer may replace the Commodity Swap (and any related guaranty of the Commodity Swap Counterparty's obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty upon delivery to the Trustee of a Rating Confirmation.

(iii) If the Commodity Swap is subject to termination (or, in the case of clause (B) below, is terminated) by either party in accordance with its terms, then (A) Issuer may, subject to clause (i) above, terminate the Commodity Swap if Issuer has the right to do so, and (B) Issuer may enter into a replacement Commodity Swap with an alternate Commodity Swap Counterparty without Rating Confirmation, but only if the replacement Commodity Swap is identical in all material respects to the existing Commodity Swap, except for the identity of the Commodity Swap Counterparty, and (1) the replacement Commodity Swap Counterparty (or its credit support provider under the Commodity Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) the rating then assigned by each Rating Agency to the Bonds, or (2) the Commodity Swap Counterparty provides such collateral and security arrangements as Issuer shall determine to be necessary, and (3) in either case, the replacement Commodity Swap Counterparty enters into a replacement Energy Supplier Custodial Agreement with the Energy Supplier and the Custodian that is identical in all material respects to the existing Energy Supplier Custodial Agreement.

(c) The following shall apply with respect to the mandatory termination of the Commodity Swap and Energy Purchase Agreement:

(i) Upon the occurrence of a Commodity Swap Mandatory Termination Event, Issuer shall (A) notify the Energy Supplier of such event pursuant to Section 17.5(a) of the Energy Purchase Agreement, and (B) in accordance with Section 17.5(a) of the Energy Purchase Agreement, use its good faith efforts to replace the Commodity Swap with an alternate Commodity Swap, subject to the conditions of subsection (b)(ii) above, during the 120 day replacement period contemplated by Section 17.5(a) of the Energy Purchase Agreement or any period that the Custodian, under the terms of the Custodial Agreements, is making payments (an "*Alternate Replacement Period*"), *provided* that any such Alternate Replacement Period shall end on the earlier of the date on which the Custodian

ceases making payments under the Custodial Agreements and the date of the sixth consecutive monthly payment by the Custodian.

(ii) If Issuer is unable to enter into an alternate Commodity Swap pursuant to clause (i)(B) above during such 120-day replacement period or Alternate Replacement Period, as applicable, Issuer shall (A) designate an Early Termination Date for the Energy Purchase Agreement in accordance with Section 17.4(b) of the Energy Purchase Agreement, with such Early Termination Date occurring immediately at the end of such replacement period, and (B) unless the Commodity Swap has been terminated automatically pursuant to Section 6(a) thereof, designate an early termination date for the Commodity Swap pursuant to Section 6(a) thereof with such early termination date occurring concurrently with the Early Termination Date under the Energy Purchase Agreement described in clause (A) above.

(iii) A "*Commodity Swap Mandatory Termination Event*" occurs if the Commodity Swap becomes terminable by Issuer pursuant to Part 1(h)(ii) (failure to pay after cure period) of the Schedule to the Commodity Swap.

Section 2.13. Provisions Regarding Interest Rate Swap. (a) In connection with the issuance of any Variable Rate Bonds, Issuer shall enter into the initial Interest Rate Swap with the Interest Rate Swap Counterparty. The following shall apply to the Interest Rate Swap:

(i) The method for the calculation of the Interest Rate Swap Payments and Interest Rate Swap Receipts, as applicable, and the scheduled payment dates therefor are set forth in the Interest Rate Swap;

(ii) Interest Rate Swap Payments shall be made by the Trustee (for the account of Issuer) from the Debt Service Account on parity with principal and interest payments on Bonds; and

(iii) Interest Rate Swap Receipts shall be payable directly to the Trustee (for the account of Issuer) and shall be deposited directly into the Debt Service Account.

(b) The following shall apply with respect to restrictions on replacement and termination of the Interest Rate Swap:

(i) Issuer agrees that it will not exercise any right to declare an early termination date under the Interest Rate Swap unless either (A) Issuer has entered into a replacement Interest Rate Swap in accordance with clause (ii) and (iii) below, and such replacement Interest Rate Swap will be effective as of such early termination date and cover interest rate exposure from and after such early termination date, or (B) in all other cases, the Energy Purchase Agreement will terminate prior to or as of such early termination date.

(ii) Issuer may replace the Interest Rate Swap (and any related guaranty of the Interest Rate Swap Counterparty's obligations thereunder) with a similar agreement for the

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) Issuer may, subject to clause (i) above, terminate the Interest Rate Swap if Issuer has the right to do so, and (B) Issuer may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without Rating Confirmation, but only if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap, except for the identity of the Interest Rate Swap Counterparty, and (1) the alternate Interest Rate Swap Counterparty (or its credit support provider under the Interest Rate Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) at least as highly as the rating then assigned by each Rating Agency to the Bonds, or (2) the Interest Rate Swap Counterparty provides such collateral and security arrangements as Issuer shall determine to be necessary.

Section 2.14. [CPI Index Rate Periods.] [The provisions of this Section 2.14 shall apply to Index Rate Bonds bearing interest in a CPI Index Rate Period.

(a) *Determination of Applicable Spread*. In connection with the issuance of a Series of Bonds bearing interest at a CPI Index Rate, or the Conversion of the Interest Rate Period for a Series of Bonds to a CPI Index Rate Period, Issuer shall determine the Applicable Spread for such Bonds for the duration of the applicable CPI Index Rate Period, and shall specify such Applicable Spread in the Index Rate Determination Certificate for the applicable CPI Index Rate Period. The Applicable Spread for a CPI Index Rate Period shall be such amount as shall result in the minimum interest rate(s) which, if borne by the Bonds of the applicable Series as of the first day of the applicable CPI Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds at a price equal to 100% of the aggregate principal amount of such Bonds on the first day of the applicable CPI Index Rate Period.

(b) *Determination of CPI Index Rate.*

(i) During any CPI Index Rate Period for a Series of Bonds, such Bonds shall bear interest at the CPI Index Rate, determined using the CPI Index Rate Formula and the Applicable Spread, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such CPI Index Rate Period.

(ii) The Calculation Agent shall by noon, New York time, on each CPI Index Rate Reset Date (or, if such CPI Index Rate Reset Date is not a Business Day, on the next succeeding Business Day) determine the CPI Index Rate for the CPI Interest Rate Period that begins on such CPI Index Rate Reset Date. The Calculation Agent shall also calculate and provide to Issuer and the Trustee the amount of interest due and payable on each Interest Payment Date for the applicable

Series of Bonds at least two Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each CPI Index Rate so determined to Issuer and the Trustee by Electronic Means not later than each CPI Index Rate Reset Date. Upon the written request of any Holder, the Trustee shall confirm the CPI Index Rate then in effect. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in a CPI Index Rate Period will be rounded, if necessary, to the nearest hundred thousandth of a percentage point (*i.e.,* to five decimal places) with five millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on such Bonds while in an Index Rate Period will be rounded to the nearest cent (with one-half cent being rounded upward).

(iii) During any CPI Index Rate Period, interest shall be computed on the basis of a 360-day year of twelve 30 day calendar months.

(iv) In determining the interest rate that any Bond shall bear as provided in this Section 2.14, neither the Underwriter nor the Remarketing Agent, as applicable, the Calculation Agent, nor the Trustee shall have any liability to Issuer or the Holder of such Bond, except for its negligence or willful misconduct.

(v) If the CPI is not reported on Bloomberg CPURNSA for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, but the CPI has otherwise been published by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate. If the CPI is not published by the BLS for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, the Calculation Agent will determine the CPI with reference to an index number based on the last twelve-month change in the CPI available and announced by the Department of the Treasury for its Inflation-Indexed Securities as described at 62 Federal Register 846-874 (January 6, 1997) (the *"Treasury Inflation-Indexed Securities Regulation"*) or, if no such index number is announced, in accordance with general market practice at the time.

(vi) In calculating CPIt and CPIt-12, the Calculation Agent will use the most recently available value of the CPI determined as described above on the applicable Interest Reset Date, even if such value has been adjusted from a prior reported value for the relevant month. However, if a value of CPIt and CPIt-12 used by the Calculation Agent on any Interest Reset Date to determine the interest rate on the CPI Bonds (an *"Initial CPI Value"*) is subsequently revised by the BLS, the Calculation Agent will continue to use the Initial CPI Value for all purposes hereunder, and the interest rate on the related CPI Index Rate Reset Date, as determined based upon the Initial CPI Value, will not be revised.

(c) *CPI Index Rate Continuation.*

(i) On any Mandatory Purchase Date pursuant to Section 4.13 and unless Issuer has given notice with respect to the Conversion of the Bonds to an Interest Rate Period other than the CPI Index Rate Period, Issuer may establish a new CPI Index Rate Period and a new CPI Index Rate for the Bonds with such right to be exercised by delivery of an Index Rate Continuation Notice to the Trustee no less than 30 days prior to the effective date of the new CPI Index Rate Period. The CPI Index Rate Continuation Notice shall be accompanied by a letter of Bond Counsel to the effect that Bond Counsel expects to be able to deliver a Favorable Opinion of Bond Counsel on the effective date of the new CPI Index Rate Period.

(ii) Any establishment of a new CPI Index Rate and CPI Index Rate Period for a Series of Bonds pursuant to paragraph (i) above must comply with the following conditions:

(A) the first day of such new CPI Index Rate Period must be a Mandatory Purchase Date for such Bonds pursuant to the provisions of Section 4.13, and such Bonds shall be required to be tendered for purchase on such date;

(B) the first day of such new CPI Index Rate Period must be a Business Day; and

(C) no new CPI Index Rate shall become effective unless (x) the Favorable Opinion of Bond Counsel referred to in paragraph (i) above is delivered on the first day of the new CPI Index Rate Period and (y) there is no Failed Remarketing on the Mandatory Purchase Date on which such new CPI Index Rate Period is to become effective.

(iii) Upon receipt by the Trustee of a CPI Index Rate Continuation Notice from an Authorized Officer, as soon as practicable, but in any event not less than 10 Business Days prior to the first day of the proposed CPI Index Rate Period, Issuer (or any dissemination agent appointed by Issuer) shall give notice by first class mail or by Electronic Means via EMMA to the Holders of the Bonds of the applicable Series, which notice shall state in substance:

(A) that a new CPI Index Rate Period and CPI Index Rate is to be established for such Bonds and the proposed effective date of such new CPI Index Rate Period (which date shall be the Mandatory Purchase Date for such Bonds pursuant to Section 4.13), and that such new CPI Index Rate Period and CPI Index Rate will become effective on such date if the conditions specified in this Section 2.14 are satisfied on or before such date;

(B) that all Bonds of the applicable Series are subject to mandatory tender for purchase on the applicable Mandatory Purchase Date

pursuant to Section 4.13 (whether or not the proposed new CPI Index Rate Period becomes effective on such date) at the Purchase Price, which shall be specified therein;

(C) the first day of the new CPI Index Rate Period;

(D) that the new CPI Index Rate Period and CPI Index Rate for the Bonds shall not be established unless a Favorable Opinion of Bond Counsel is delivered to the Trustee on the first day of the new CPI Index Rate Period and no Failed Remarketing occurs on such date;

(E) the CUSIP numbers or other identification information of the Bonds of the applicable Series; and

(F) that, to the extent that there shall be on deposit with the Trustee on the first day of the new CPI Index Rate Period an amount of money sufficient to pay the Purchase Price thereof, all the Bonds not delivered to the Trustee on or prior to such date shall be deemed to have been properly tendered for purchase and shall cease to constitute or represent a right on behalf of the Holder thereof to the payment of principal thereof or interest thereon and shall represent and constitute only the right to payment of the Purchase Price on deposit with the Trustee, without interest accruing thereon after such date.

(d) *End of CPI Index Rate Period*. In the event Issuer has not given a CPI Index Rate Continuation Notice or other Written Notice with respect to the Conversion of Bonds to an Interest Rate Period other than a CPI Index Rate Period, in either case at the time required by this Indenture, or if the conditions to the effectiveness of a new CPI Index Rate Period and new CPI Index Rate set forth above are not satisfied, including as a result of the Remarketing Agent's failure to establish a CPI Index Rate as herein provided, then the Bonds of the applicable Series shall be purchased on the applicable Mandatory Purchase Date pursuant to Section 4.13 and a Failed Remarketing shall be deemed to have occurred and the Bonds shall not be remarketed.]

ARTICLE III

GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.01. Medium of Payment; Form and Date; Letters and Numbers. (a) The Bonds shall be payable, with respect to interest, principal and Redemption Price, in any coin or currency

of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds may be issued only in the form of fully registered Bonds without coupons, in Authorized Denominations. The Bonds shall be in substantially the form set forth in *Exhibit A* hereto, and may be printed, engraved, typewritten or otherwise produced.

(c) Unless Issuer shall otherwise direct, the Bonds shall be numbered from one upward.

Section 3.02. Legends. The Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by Issuer prior to the authentication and delivery thereof.

Section 3.03. Execution and Authentication. [(a) The parties agree that the Electronic Signature of a party to this Indenture, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. The parties agree that any Electronically Signed document (including this Indenture) shall be deemed (i) to be "written" or "be in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "Electronic Signature" or "Electronically Signed" means a manually signed original signature that is then transmitted by Electronic Means and containing, or to which there is affixed, an Electronic Signature.] ***[NTD: To Be Discussed]***

(b) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Treasurer/Controller or any other Authorized Officer of the Issuer, and attested by the manual or facsimile signature of the Secretary of the Issuer or any other Authorized Officer. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated and delivered by the Trustee, such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the Persons who signed such Bonds had not ceased to hold such offices. Any Bond may be signed on behalf of the Issuer by such Persons as at the time of the execution of such Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date borne by the Bonds such Persons may not have been so authorized or have held such office.

(c) The Bonds shall bear thereon a certificate of authentication, in the form set forth in *Exhibit A* hereto, executed manually by the Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Indenture, and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Indenture and that the Holder thereof is entitled to the benefits of this Indenture.

[(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.] ***[NTD: To Be Discussed]***

Section 3.04. Exchange, Transfer and Registry. (a) The Bonds shall be registered and transferred only upon the books of the Bond Registrar, which the Bond Registrar shall keep for such purposes at the designated corporate trust office of the Bond Registrar, and may be transferred by the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney and in compliance with the applicable terms of this Indenture. The transferor shall also provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Upon the registration of transfer of any Bond, Issuer shall issue in the name of the transferee a new Bond or Bonds of the same Series, aggregate principal amount and maturity as the surrendered Bond.

(b) The registered owner of any Bond or Bonds of one or more denominations shall have the right to exchange such Bond or Bonds for a new Bond or Bonds of any denomination then authorized for such Bond or Bonds of the same Series, aggregate principal amount and maturity of the surrendered Bond or Bonds. Such Bond or Bonds shall be exchanged by Issuer for a new Bond or Bonds upon the request of the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender of such Bond or Bonds together with a written instrument requesting such exchange, in form satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney.

(c) Issuer and each Fiduciary may deem and treat the Person in whose name any Bond shall be registered upon the Bond registration books maintained by the Bond Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of

receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither Issuer nor any Fiduciary shall be affected by any notice to the contrary.

Section 3.05. Regulations With Respect to Exchanges and Registration of Transfers. In all cases in which the privilege of exchanging or registering the transfer of Bonds is exercised, Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or registration of transfer shall forthwith be delivered to the Trustee and cancelled or retained by the Trustee. Prior to every such exchange or registration of transfer of Bonds, whether temporary or definitive, Issuer or the Bond Registrar may require the Holder to pay an amount sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. Every applicable person that transfers Bonds in any such exchange or transfer shall also timely provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligation, including without limitation any cost-basis reporting obligations under section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Unless otherwise provided in a Supplemental Indenture, neither Issuer nor the Bond Registrar shall be required (a) to register the transfer or exchange of Bonds for the period next preceding any Interest Payment Date for the Bonds, beginning with the Regular Record Date for such Interest Payment Date and ending on such Interest Payment Date, or for the period next preceding any date for the proposed payment of Defaulted Interest with respect to such Bonds beginning with the Special Record Date for the date of such proposed payment and ending on the date of such proposed payment, (b) to register the transfer or exchange of Bonds for a period beginning 15 days before the mailing of any notice of redemption of such Bonds and ending on the day of such mailing, or (c) to register the transfer or exchange of any Bonds called for redemption. Every Person that transfers Bonds shall timely provide or cause to be timely provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. If any Bond becomes mutilated or is lost, stolen or destroyed, Issuer may execute and the Trustee shall authenticate and deliver a new Bond of like Series, date of issue, maturity date, principal amount and interest rate per annum as the Bond so mutilated, lost, stolen or destroyed, *provided* that (a) in the case of such mutilated Bond, such Bond is first surrendered to the Trustee, (b) in the case of any such lost, stolen or destroyed Bond, there is first furnished evidence of such loss, theft or destruction in form satisfactory to the Trustee together with indemnity satisfactory to the Trustee, (c) all other reasonable requirements of Issuer and the Trustee are complied with, and (d) expenses in connection with such transaction are paid by the Holder. Any Bond surrendered for registration or transfer shall be cancelled. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual

obligations on the part of Issuer, whether or not the Bonds so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued under this Indenture, in any moneys or securities held by Issuer or any Fiduciary for the benefit of the Bondholders.

Section 3.07. Temporary Bonds. (a) Until the definitive Bonds are prepared, Issuer may execute, in the same manner as is provided in Section 3.03, and upon the request of Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. Issuer at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and the cancellation of such surrendered temporary Bonds, the Trustee shall authenticate and, without service charge to the Holder thereof (except a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto), deliver in exchange therefor, definitive Bonds of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to this Indenture.

(b) All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

Section 3.08. Payment of Interest on Bonds; Interest Rights 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 date (hereinafter, the *"Regular Record Date"*) which is the fifteenth day of the calendar month next preceding such Interest Payment Date; *provided, that,* for Variable Rate Bonds, the Regular Record Date for the Interest Payment Date occurring [_____, 2021] shall be [_____, 2021].

Any interest on any Bond which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (hereinafter, *"Defaulted Interest"*) shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by Issuer to the Persons in whose names the Bonds are registered at the close of business on a date (hereinafter, the *"Special Record Date"*) for the payment of such Defaulted Interest, which shall be fixed in the following manner. Issuer shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time Issuer shall deposit with the Paying Agents an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to and approved in writing by the Paying Agents for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Section provided. Thereupon the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days or less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the written notice of

the proposed payment. The Bond Registrar shall promptly notify Issuer of such Special Record Date and, in the name and at the expense of Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration or transfer of or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 3.09. Book Entry System; Appointment of Securities Depository. All Bonds shall be registered in the name of Cede & Co., as nominee for DTC, as Securities Depository, and held in the custody or for the account of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of Bonds, and the Beneficial Owners will not receive physical delivery of Bond certificates except as provided in this Indenture. For so long as the Securities Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership interests will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership of Bonds is to receive, hold or deliver any Bond certificate. In connection with any proposed transfer outside the Book Entry System, the Issuer or the Securities Depository shall provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Issuer may, with Written Notice to the Trustee but without the consent of any Bondholders, appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book Entry System for the Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended.

Issuer and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book Entry System with respect to the Bonds, and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of the Bonds beneficially owned by the Beneficial Owners.

Whenever, during the term of the Bonds, the Beneficial Ownership of any Series thereof is determined by a book entry at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring such Bonds shall be deemed modified to require the appropriate Person to meet the requirements of the Securities Depository as to registering or transferring the book entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Bonds shall, while such Bonds are in such Book Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law. Notwithstanding the foregoing, the Trustee shall have no obligation or duty to monitor, determine or inquire as to

compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any security (including any transfers between or among Securities Depository Participants or Beneficial Owners) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Except as otherwise specifically provided herein with respect to the rights of Participants and Beneficial Owners, when a Book Entry System is in effect, Issuer and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal, Redemption Price or Purchase Price of and interest on such Bonds or portion thereof to be redeemed or purchased, of giving any notice permitted or required to be given to the Bondholders under this Indenture and of voting, and neither Issuer nor the Trustee shall be affected by any notice to the contrary. Neither Issuer nor the Trustee will have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other Person which is not shown on the bond register, with respect to (a) the accuracy of any records maintained by the Securities Depository or any Participant; (b) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount, Redemption Price or Purchase Price of, or interest on, any Bonds; (c) the delivery of any notice by the Securities Depository or any Participant; (d) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of any of the Bonds; or (e) any other action taken by the Securities Depository or any Participant. The Trustee shall pay all principal or Redemption Price of and interest on the Bonds registered in the name of Cede only to or "upon the order of" the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in the State and New York), and all such payments shall be valid and effective to fully satisfy and discharge Issuer's obligations with respect to the principal, Redemption Price or purchase price of and interest on such Bonds to the extent of the sum or sums so paid.

The Book Entry System may be discontinued by the Trustee and Issuer, at the Written Direction and expense of Issuer, and Issuer and the Trustee will cause the delivery of Bond certificates to such Beneficial Owners of the Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to any Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving 30 days' written notice to Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(ii) Issuer determines, with written notice to the Trustee, not to continue the Book Entry System through a Securities Depository for the Bonds.

When the Book Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

In connection with any proposed transfer outside the Book Entry System of the Securities Depository, the Securities Depository and Issuer shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

[Section 3.10. Subsidy Payments. In the event that one or more Series of Bonds are issued which qualify the Issuer to receive Subsidy Payments and the Issuer, in a Supplemental Indenture, pledges such Subsidy Payments to the repayment of the principal of, and interest on, the Bonds, then, to the extent such Subsidy Payments are received by the Trustee, they shall constitute Revenues under the Indenture.]

Section 3.11. Limitation of Liability of the Issuer. Notwithstanding anything to the contrary herein or in the Bonds, all obligations of the Issuer to make payments of any kind pursuant to this Indenture are special, limited obligations of the Issuer, payable solely from, and secured solely by, the Trust Estate as and to the extent provided herein. The Issuer shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Neither the faith and credit of the Issuer nor the taxing power of the State or any political subdivision thereof is pledged to payments pursuant to this Indenture or the Bonds. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Indenture or the Energy Project, except solely to the extent Revenues are received for the payment thereof.

ARTICLE IV

REDEMPTION OF BONDS AND TENDER PROVISIONS

Section 4.01. Extraordinary Redemption. (a) The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the Month following the Early Termination Payment Date, which redemption date in the case of a Failed Remarketing will be the same day as the current Mandatory Purchase Date, at the following Redemption Prices:

(i) in the case of a Series of Bonds bearing interest at the Term Rate, the Amortized Value thereof, and

(ii) in the case of a Series of Variable Rate Bonds, 100% of the principal amount thereof,

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

(b) Issuer shall (i) provide the Trustee with Written Notice of the Early Termination Payment Date as provided in Section 7.12(b), and (ii) as of the first day of the Month prior to a Mandatory Purchase Date, direct the Trustee to send a conditional notice of redemption pursuant to Section 4.04 in the event that a Failed Remarketing may occur.

Section 4.02. Sinking Fund Redemption. The Series 2021A Bonds maturing on [_____, 20__] shall be subject to mandatory redemption prior to their stated maturity in part (by lot) from Sinking Fund Installments, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption on the following dates and in the following amounts:

REDEMPTION DATE	PRINCIPAL AMOUNT	REDEMPTION DATE	PRINCIPAL AMOUNT

_____

* Stated Maturity

Section 4.03. Optional Redemption. (a) The Series 2021A Bonds are subject to redemption at the option of Issuer in whole or in part (in such amounts and by such maturities as may be specified by Issuer and by lot within a maturity) on any date prior to [_____, 20__] at a Redemption Price, calculated by a quotation agent selected by Issuer, equal to the greater of:

(i) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2021A Bond to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of the stated maturity date of such Series 2021A Bond or the Initial Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for such Series 2021A Bonds minus 0.25% per annum, and

(ii) the Amortized Value thereof;

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

(b) The Series 2021A Bonds maturing on or after the Initial Mandatory Purchase Date are subject to redemption at the option of Issuer in whole or in part (in such amounts and by such maturities as may be specified by Issuer and by lot within a maturity) on any date on or after [_____, 20__] at a Redemption Price equal to the Amortized Value thereof as of the first

day of the month of redemption (expressed as a percentage of the principal amount of the Series 2021A Bonds to be redeemed), as follows:

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

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

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

(d) The Series 2021A Bonds shall also be subject to redemption at the option of Issuer, as provided in a Supplemental Indenture executed or Interest Rate Determination Certificate delivered in connection with a Conversion of the Bonds.

(e) For so long as a Series of Bonds is bearing interest in an Index Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer, in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity), on any Business Day on or after the first Business Day of the third month preceding the Index Rate Tender Date for such Series of Bonds at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(f) For so long as a Series of Bonds is bearing interest in an Daily Interest Rate Period or a Weekly Interest Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity) on any Business Day at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(g) For so long as a Series of Bonds is bearing interest in an Commercial Paper Interest Rate Period, each Bond of such Series is subject to optional redemption by the Issuer on the day succeeding the last day of any CP Interest Term for such Bond at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(h) Notwithstanding anything to the contrary contained herein, in connection with the Conversion of a Series of Bonds from one Interest Rate Period to another or the establishment of a new Term Rate Period or Index Rate Period for a Series of Bonds, the Issuer may, in the Written Direction to the Trustee delivered in connection with such Conversion or establishment of a new Term Rate Period or Index Rate Period, designate additional or different terms upon which the Bonds of such Series will be subject to optional redemption during the new Interest Rate Period

for such Series of Bonds if such additional or different terms of optional redemption are approved by Bond Counsel.

(i) In lieu of redeeming Series 2021A Bonds pursuant to this Section 4.03, the Trustee may, upon the Written Direction of Issuer, use such funds as may be available by Issuer or as are otherwise available hereunder to purchase such Series 2021A Bonds at a Purchase Price equal to the applicable Redemption Price of such Series 2021A Bonds. Any Series 2021A Bonds so purchased may be 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 Issuer.

Section 4.04. Redemption Notice. (a) When the Trustee receives Written Notice from Issuer in the form of *Exhibit D* hereto of its election or direction to redeem Bonds pursuant to Section 4.06, the Trustee shall give notice, in the name of Issuer, substantially in the form provided in such *Exhibit D,* or when redemption of Bonds is authorized or required other than at the election or direction of Issuer pursuant to Section 4.07, the Trustee shall give notice, in the name of Issuer, substantially in the form attached hereto as *Exhibit E,* with respect to any extraordinary redemption pursuant to Section 4.01(a), of the redemption of such Bonds by first class mail, postage prepaid, to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee in writing for that purpose, as of the Regular Record Date, as follows:

(i) for any redemption of the Bonds pursuant to Section 4.01, not less than 15 days prior to the redemption date;

(ii) for redemptions of Bonds pursuant to Section 4.02 or Section 4.03(a), not less than 30 days prior to the redemption date for Bonds bearing interest in a Term Rate Period, and not less than 15 days prior to the redemption date for Bonds bearing interest in any other Interest Rate Period;

(iii) for redemptions of Bonds pursuant to Section 4.03(b) or Section 4.02(d), not less than 15 days prior to the redemption date.

A notice of redemption of the Series 2021A Bonds (A) pursuant to clause (iii) above may include a statement that, if the Series 2021A Bonds are not redeemed for any reason, the Series 2021A Bonds shall be subject to mandatory tender for purchase on the Initial Mandatory Purchase Date, and (B) pursuant to clause (i) or clause (iii) above may be combined with notice of the mandatory tender of the Series 2021A Bonds on the Initial Mandatory Purchase Date pursuant to Section 4.16, subject to the condition set forth in Section 4.16(b).

(b) In the event that the Bonds may be subject to extraordinary redemption as a result of a Failed Remarketing that could occur if the Trustee has not received the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds pursuant to this Section 4.04 may be a conditional notice of redemption, delivered in each case not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee's failure to receive, by noon New York City time on the fifth Business Day preceding such

Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date and the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed.

(c) Each notice of redemption shall identify the Bonds to be redeemed and shall state (i) the redemption date, (ii) the Redemption Price or the manner in which it will be calculated, (iii) that the Bonds called for redemption must be surrendered to collect the Redemption Price, (iv) the address at which the Bonds must be surrendered, and (v) that interest on the Bonds called for redemption ceases to accrue on the redemption date.

(d) With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the meaning of Section 12.01 of this Indenture, such notice shall state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of money sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such money shall not have been so received said notice shall be of no force and effect, and Issuer shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

(e) Failure of the registered owner of any Bonds which are to be redeemed to receive any such notice, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any other Bonds as to which proper notice was given as provided herein.

Section 4.05. Bonds Redeemed in Part. Upon surrender of a Bond redeemed in part, Issuer will execute and the Trustee will authenticate and deliver to the Holder thereof a new Bond or Bonds in Authorized Denominations equal in principal amount to the unredeemed portion of the Bond surrendered. Notwithstanding anything herein to the contrary, so long as the Bonds are held in the Book Entry System the Bonds will not be delivered as set forth above; rather transfers of Beneficial Ownership of such Bonds to the Person indicated above will be effected on the registration books of the Securities Depository pursuant to its rules and procedures.

Section 4.06. Redemption at the Election or Direction of Issuer. In the case of any redemption of Bonds at the election or direction of Issuer, Issuer shall give Written Notice to the Trustee, at least five Business Days prior to the last date on which the Trustee is required to give notice of redemption pursuant to Section 4.04, of its election or direction so to redeem, the Series, Maturity Dates, principal amounts by Maturity Dates and CUSIP numbers of the Bonds to be redeemed, the Redemption Price or the manner in which it will be calculated for each Maturity Date of Bonds to be redeemed, and the date on which such Bonds are to be redeemed, and directing

the Trustee to provide notice of such redemption to the Owners of such Bonds pursuant to Section 4.04 (maturities and principal amounts thereof to be redeemed shall be determined by Issuer in its sole discretion). In the event notice of redemption shall have been given as in Section 4.04 provided, there shall be paid on or prior to the redemption date to the appropriate Paying Agents an amount in cash which, in addition to other moneys, if any, available therefor held by such Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, all of the Bonds to be redeemed. Issuer shall promptly notify the Trustee in writing of all such payments by it to such Paying Agents.

Section 4.07. Redemption Other Than at Issuer's Election or Direction. Whenever by the terms of this Indenture the Trustee is required or authorized to redeem Bonds other than at the election or direction of Issuer, the Trustee shall (i) select the Bonds or portions of Bonds to be redeemed, (ii) give the notice of redemption and (iii) pay out of moneys available therefor the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article IV and, to the extent applicable, Section 5.07 and Section 5.08.

Section 4.08. Selection of Bonds To Be Redeemed. If less than all of the Bonds of like Series and maturity shall be called for redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds not previously called for redemption; *provided, however,* that the portion of any Bond of a denomination of more than a minimum Authorized Denomination to be redeemed shall be in the principal amount of such minimum Authorized Denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of a minimum Authorized Denomination which is obtained by dividing by such minimum Authorized Denomination the principal amount of such Bond to be redeemed in part.

Section 4.09. Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 4.04, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price, plus interest accrued and unpaid to the redemption date. If there shall be drawn for redemption less than all of a Bond, Issuer shall execute and the Trustee shall authenticate and the Paying Agent shall deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bonds so surrendered, Bonds of like maturity in any of the Authorized Denominations. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like maturity to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption. Upon the payment of the Redemption Price of and any

accrued interest on the Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Section 4.10. Cancellation and Destruction of Bonds. All Bonds paid or redeemed either at or before maturity shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10(c) that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee pursuant to the Written Direction of Issuer, shall thereupon be promptly cancelled (or deemed to have been cancelled). Bonds so cancelled may, to the extent permitted by law, at any time be destroyed by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the Bonds so destroyed, and one executed certificate shall be filed with Issuer and the other executed certificate shall be retained by the Trustee.

Section 4.11. Optional Tender During Daily or Weekly Interest Rate Periods. (a) During any Daily Interest Rate Period or Weekly Interest Rate Period for a Series of Bonds, any Eligible Bond of such Series shall be purchased from its Owner at the option of the Owner on any Business Day at the applicable Purchase Price, payable in immediately available funds, upon delivery to the Trustee at its designated corporate trust office for delivery of notices and the Remarketing Agent of an irrevocable written notice which states the name of the Owner, the principal amount and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery of such notice to the Trustee. Any notice delivered to the Trustee after 4:00 p.m., New York City time, shall be deemed to have been received on the next succeeding Business Day. Payment of such Purchase Price shall be made from the sources and in the order of priority set forth in Section 4.15(e) on the date specified in such notice, provided such Bond is delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

(b) So long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, only direct or indirect Participants may give notice of the election to tender Bonds or portions thereof and the Beneficial Owners shall not have the right to tender Bonds directly to the Trustee, except through such Participants.

Section 4.12. Mandatory Tender for Purchase on Day Next Succeeding the Last Day of Each CP Interest Term. On the day next succeeding the last day of each CP Interest Term for an Eligible Bond in a Commercial Paper Interest Rate Period, unless such day is the first day of a new Interest Rate Period for such Bond (in which event such Bond shall be subject to mandatory purchase pursuant to Section 4.14), such Bond shall be purchased from its Owner at the applicable Purchase Price payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; *provided, however,* that in any event such Bond will not bear interest at the CP Interest Term Rate after the last day of the

applicable CP Interest Term. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority set forth in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

Section 4.13. Mandatory Tender for Purchase on the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date. On the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date for a Series of Bonds (which, for the avoidance of doubt, can occur only on a Mandatory Purchase Date), unless such day is the first day of a new Interest Rate Period for such Bonds (in which event such Bonds shall be subject to mandatory purchase pursuant to Section 4.14), each Eligible Bond of such Series shall be purchased from the Owner thereof at the applicable Purchase Price, payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; *provided, however,* that in any event such Bond will not bear interest at the applicable Index Rate or Term Rate after the last day of the applicable Index Rate Period or Term Rate Period, respectively. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange. The Series 2021A Bonds shall be subject to mandatory tender pursuant to this Section 4.13 on the Initial Mandatory Purchase Date.

Section 4.14. Mandatory Tender for Purchase on Conversion of Interest Rate Period. Eligible Bonds of a Series shall be subject to mandatory tender for purchase on each Conversion Date (which shall be a Mandatory Purchase Date) at the applicable Purchase Price, payable in immediately available funds. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to such Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in this paragraph or in the notice provided pursuant to Section 2.10.

Section 4.15. General Provisions Relating to Tenders.

(a) *Creation of Bond Purchase Fund.*

(i) There shall be created and established hereunder with the Trustee a fund to be designated the "Bond Purchase Fund" to be held in trust only for the benefit of the Owners of tendered Bonds who shall thereafter be restricted exclusively to the moneys held in such fund for the satisfaction of any claim for the

Purchase Price of such tendered Bonds. The Bond Purchase Fund and the Accounts therein are not Pledged Funds.

(ii) There shall be created and designated the following Accounts with respect to each Series of Bonds within the Bond Purchase Fund: the "Remarketing Proceeds Account" and the "Issuer Purchase Account." Moneys paid to the Trustee for the purchase of tendered or deemed tendered Bonds of a Series received from (A) the Remarketing Agent shall be deposited in the Remarketing Proceeds Account for such Series in accordance with the provisions of Section 4.15(d)(i) and (B) Issuer shall be deposited in Issuer Purchase Account in accordance with the provisions of Section 4.15(d)(ii). Moneys provided by Issuer not required to be used in connection with the purchase of tendered Bonds shall be returned to Issuer in accordance with Section 4.15(d) and Section 4.15(e).

(iii) Moneys in Issuer Purchase Account and the Remarketing Proceeds Account with respect to a Series of Bonds shall not be commingled with other funds held by the Trustee and shall remain uninvested. Issuer shall have no right, title or interest in any of the funds held on deposit in the Remarketing Proceeds Account or any remarketing proceeds held for any period of time by the Remarketing Agent.

(b) *Deposit of Bonds*. The Trustee agrees to hold all Bonds delivered to it pursuant to Section 4.11, Section 4.12, Section 4.13 or Section 4.14 in trust for the benefit of the respective Owners which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds have been delivered to such Owner in accordance with the provisions of this Indenture and until such Bonds shall have been delivered by the Trustee in accordance with Section 4.15(f).

(c) *Remarketing of Bonds*.

(i) Immediately upon its receipt, but not later than noon, New York City time on the following Business Day, from an Owner of a Bond bearing interest at a Daily Interest Rate or a Weekly Interest Rate of a notice pursuant to Section 4.11, the Trustee shall notify the Remarketing Agent by telephone, promptly confirmed in writing by Electronic Means, of such receipt, specifying the principal amount of Bonds for which it has received such notice, the names of the Owners thereof and the date on which such Bonds are to be purchased in accordance with Section 4.11.

(ii) As soon as practicable, but in no event later than 10:15 a.m., New York City time, on a Purchase Date, the Remarketing Agent shall inform the Trustee by telephone, promptly confirmed in writing, by Electronic Means, of the principal amount of Purchased Bonds to be purchased on such date, the name, address and taxpayer identification number of each such purchaser, and the Authorized Denominations in which such Purchased Bonds are to be delivered. Upon receipt from the Remarketing Agent of such information, and in no event later than 12:30 p.m., New York City time, on the Purchase Date, the Trustee shall

prepare Purchased Bonds in accordance with such information received from the Remarketing Agent for the registration of transfer and redelivery to the Remarketing Agent pursuant to paragraph (f) of this Section 4.15.

(iii) Any Purchased Bonds which are subject to mandatory tender for purchase in accordance with Section 4.12, Section 4.13 or Section 4.14 which are not presented to the Trustee on the Purchase Date and any Purchased Bonds which are the subject of a notice pursuant to Section 4.16 which are not presented to the Trustee on the Purchase Date, shall, in accordance with the provisions of Section 4.16, be deemed to have been purchased upon the deposit of moneys equal to the Purchase Price thereof into any or all of the accounts of the Bond Purchase Fund.

(d) *Deposits of Funds.*

(i) The Trustee shall deposit into the Remarketing Proceeds Account for the applicable Series of Bonds any amounts received by it in immediately available funds by 12:30 p.m., New York City time, on any Purchase Date from the Remarketing Agent against receipt of Bonds by the Remarketing Agent pursuant to Section 4.15(f) and on account of Purchased Bonds remarketed pursuant to the terms of the Remarketing Agreement.

(ii) Issuer may, in its sole discretion, pay to the Trustee in immediately available funds the amount equal to the difference, if any, between the total Purchase Price of Bonds to be purchased and the amount of money deposited under Section 4.15(d)(i) (the *"Additional Liquidity Drawing Amount"*) by 12:45 p.m., New York City time. The Trustee shall deposit any Additional Liquidity Drawing Amounts into Issuer Purchase Account for the applicable Series of Bonds.

(iii) The Trustee shall hold all proceeds received from the Remarketing Agent or Issuer pursuant to this Section 4.15(d) in trust for the tendering Owners. In holding such proceeds and moneys, the Trustee will be acting on behalf of such Owners by facilitating the purchase of the Bonds and not on behalf of Issuer and will not be subject to the control of Issuer. Subject to the provisions of Section 4.15(e), following the discharge of the pledge created by Section 5.01 or after payment in full of the Bonds, the Trustee shall pay any moneys remaining in any Account of the Bond Purchase Fund directly to the Persons for whom such money is held upon presentation of evidence reasonably satisfactory to the Trustee that such Person is rightfully entitled to such money and the Trustee shall not pay such amounts to any other Person.

(e) *Disbursements; Payment of Purchase Price.* Moneys delivered to the Trustee on a Purchase Date shall be applied at or before 1:00 p.m., New York City time, on such Purchase Date to pay the Purchase Price of Purchased Bonds of the applicable Series in immediately available funds as follows in the indicated order of application and, to the extent not so applied on such date, shall be held in the separate and segregated

Accounts of the Bond Purchase Fund for the benefit of the Owners of the Purchased Bonds which were to have been purchased:

FIRST: Moneys deposited in the Remarketing Proceeds Account for the Bonds of the applicable Series; and

SECOND: Moneys deposited in Issuer Purchase Account for the Bonds of the applicable Series.

Any moneys held by the Trustee in Issuer Purchase Account remaining unclaimed by the Owners of the Purchased Bonds which were to have been purchased for two years after the respective Purchase Date for such Bonds shall be paid to Issuer, upon a request in a Written Direction of Issuer against written receipt therefor. The Owners of Purchased Bonds who have not yet claimed money in respect of such Bonds shall thereafter be entitled to look only to the Trustee, to the extent it shall hold moneys on deposit in the Bond Purchase Fund, or Issuer to the extent moneys have been transferred in accordance with this Section 4.15(e). The Trustee shall have no obligation to advance its own funds to fund the Bond Purchase Fund or otherwise pay the Purchase Price on any Bonds.

(f) *Delivery of Purchased Bonds.*

(i) The Remarketing Agent shall give telephonic notice, promptly confirmed by a written notice, by Electronic Means, to the Trustee on each date on which Bonds shall have been purchased pursuant to Section 4.11, Section 4.12, Section 4.13, or Section 4.14, specifying the principal amount of such Bonds, if any, sold by it and a list of such purchasers showing the names and Authorized Denominations in which such Bonds shall be registered, and the addresses and social security or taxpayer identification numbers of such purchasers. By 12:30 p.m., New York City time, on the Purchase Date, a principal amount of Bonds equal to the amount of Purchased Bonds purchased with moneys from the Remarketing Proceeds Account shall be made available by the Trustee to the Remarketing Agent against payment therefor in immediately available funds.

(ii) A principal amount of Bonds equal to the amount of Purchased Bonds purchased from moneys on deposit in Issuer Purchase Account shall be delivered on the day of such purchase by the Trustee to or as directed by Issuer. The Trustee shall register such Bonds in the name of Issuer or as otherwise directed by Issuer.

Section 4.16. Notice of Mandatory Tender for Purchase. In connection with any mandatory tender for purchase of Bonds in accordance with Section 4.12, Section 4.13 or Section 4.14, the Trustee shall give the notice (which in the case of a mandatory tender pursuant to Section 4.14 shall be given as a part of the notice given pursuant to Section 2.06(c), Section 2.07(c), Section 2.08(c), Section 2.09(c) or Section 2.14(c)) stating: (a) that the Purchase Price of any Bond so subject to mandatory tender for purchase shall be payable only upon surrender of such Bond to the Trustee at the office specified in such notice, accompanied by an instrument

of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange; (b) that all Bonds so subject to mandatory tender for purchase shall be purchased on the Mandatory Purchase Date, unless (i) a Failed Remarketing shall have occurred prior to such Mandatory Purchase Date, in which case such Bonds shall be redeemed rather than purchased on such Mandatory Purchase Date, or (ii) such Bonds shall have otherwise been redeemed on or prior to, or are not Outstanding as of, such Mandatory Purchase Date; and (c) that in the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on such Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and that no interest shall accrue thereon on and after such Mandatory Purchase Date and that the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof. Any such notice of a mandatory tender of Bonds pursuant to Section 4.12, Section 4.13 or Section 4.14 shall be given no less than 30 days prior to the applicable Mandatory Purchase Date, and the Trustee shall simultaneously give a conditional notice of extraordinary redemption pursuant to Section 4.04 to provide for the extraordinary redemption of the Bonds if a Failed Remarketing occurs prior to the Mandatory Purchase Date. No later than five (5) Business Days prior to the date on which such conditional notice of extraordinary redemption is required to be given by the Trustee pursuant to Section 4.4, Issuer shall direct the Trustee to send such conditional redemption notice pursuant to a Written Direction in the form attached hereto as *Exhibit E*, which Written Direction shall include the applicable Redemption Date and method(s) for calculating the Redemption Price, to be followed by notice of the Redemption Price, as provided in *Exhibit E*.

Section 4.17. Irrevocable Notice Deemed to Be Tender of Bond; Undelivered Bonds Deemed Purchased on Mandatory Purchase Date. (a) The giving of notice by an Owner of a Bond bearing interest at a Daily Interest Rate or a Weekly Interest Rate pursuant to Section 4.11 shall constitute the irrevocable tender for purchase of each such Bond with respect to which such notice shall have been given, regardless of whether such Bond is delivered to the Trustee for purchase on the relevant Purchase Date as provided in this Article IV.

(b) The Trustee may refuse to accept delivery of any Purchased Bonds for which a proper instrument of transfer, with a satisfactory guaranty of signature, has not been provided; such refusal, however, shall not affect the validity of the purchase of such Bond as herein described. For purposes of this Article IV, the Trustee for the Bonds shall determine timely and proper delivery of Purchased Bonds and the proper endorsement of such Bonds. Such determination shall be binding on the Owners of such Bonds, Issuer and the Remarketing Agent, absent manifest error. If any Owner of a Bond who shall have given notice of tender of purchase pursuant to Section 4.11 or any Owner of a Bond subject to mandatory tender for purchase pursuant to Section 4.12, Section 4.13 or Section 4.14 shall fail to deliver such Bond to the Trustee at the place and on the applicable date and at the time specified, or shall fail to deliver such Bond properly endorsed, such Bond shall constitute an Undelivered Bond. If funds in the amount of the Purchase Price of the Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, from and after the date and time of that required delivery, (i) the Undelivered Bond shall be deemed to be purchased and shall no longer be deemed to be Outstanding under this Indenture; (ii) interest shall no longer accrue thereon; and (iii) funds in the amount of the Purchase Price of

the Undelivered Bond shall be held by the Trustee for such Bond for the benefit of the Owner thereof, to be paid on delivery (and proper endorsement) of the Undelivered Bond to the Trustee at its designated corporate trust office. Any funds held by the Trustee as described in clause (iii) of the preceding sentence shall be held uninvested.

Section 4.18. 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 Issuer or a Project Participant, or to any Person who controls, is controlled by, or is under common control with Issuer or a Project Participant.

(b) The Remarketing Agent shall determine the rate of interest to be borne by the Bonds bearing interest at a Daily Interest Rate, Weekly Interest Rate, CP Interest Term Rates or a Term Rate and the CP Interest Terms for each Bond during each Commercial Paper Interest Rate Period, and the applicable Calculation Agent shall determine the rate of interest to be borne by each Series of Bonds bearing interest at an Index Rate, all as provided in Article II, and shall furnish to the Trustee and to Issuer upon request, in a timely fashion by Electronic Means, each rate of interest and CP Interest Term so determined.

(c) Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and is continuing an Event of Default, there shall be no remarketing of Bonds tendered or deemed tendered for purchase.

Section 4.19. The Remarketing Agent. (a) The Remarketing Agent shall be authorized by law to perform all the duties imposed upon it pursuant to the Remarketing Agreement. The Remarketing Agent or any successor shall signify its acceptance of the duties and obligations imposed upon it pursuant to the Remarketing Agreement by an agreement under which the Remarketing Agent will agree to:

(i) determine the interest rates applicable to the Bonds of the applicable Series and give written notice to the Trustee of such rates and periods in accordance with Article II;

(ii) keep such books and records as shall be consistent with prudent industry practice; and

(iii) use its best efforts to remarket Bonds in accordance with the Remarketing Agreement.

(b) The Remarketing Agent shall hold all amounts received by it in accordance with any remarketing of Bonds in trust only for the benefit of the Owners of tendered Bonds and shall not commingle such amounts with any other moneys.

Section 4.20. Qualifications of Remarketing Agent; Resignation; Removal. (a) Each Remarketing Agent shall be a member of the National Association of Securities Dealers, having a combined capital stock, surplus and undivided profits of at least $50,000,000 and be authorized by law to perform all the duties imposed upon it by this Indenture. Any successor Remarketing Agent shall have senior unsecured long term debt which shall be rated by each Rating Agency.

(b) A Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Remarketing Agreement by giving written notice to the Trustee and Issuer. No such resignation or removal shall be effective until a successor has been appointed and has accepted such duties. A Remarketing Agent may be removed at the direction of Issuer at any time on 30 days' prior written notice, in a Written Direction of Issuer, filed with such Remarketing Agent for the related Series of Bonds and the Trustee.

Section 4.21. Successor Remarketing Agents. (a) Any corporation, association, partnership or firm which succeeds to the business of the Remarketing Agent as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, shall thereby become vested with all the property, rights and powers of such Remarketing Agent hereunder.

(b) In the event that the Remarketing Agent has given written notice of resignation or has been notified of its impending removal in accordance with Section 4.20(b), Issuer shall appoint a successor Remarketing Agent.

(c) In the event that the property or affairs of the Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and Issuer shall not have appointed its successor, Issuer shall appoint a successor and, if no appointment is made within 30 days, the Trustee shall apply to a court of competent jurisdiction for such appointment.

Section 4.22. Tender Agent. The Trustee shall serve as the tender agent for any Series of Bonds for which optional or mandatory tender for purchase is applicable under this Article IV, and as tender agent it and each successor Trustee appointed in accordance with this Indenture shall:

(a) hold all Bonds delivered to it for purchase hereunder in trust for the exclusive benefit of the respective Owners that shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners;

(b) hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the exclusive benefit of the Person that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to it for the account of such Person and, thereafter, for the benefit of the Owners tendering such Bonds; and

(c) keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection at all times during regular business hours (upon reasonable prior written notice of inspection) by Issuer and the Remarketing Agent for such Series of Bonds.

ARTICLE V

ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

Section 5.01. Pledge Effected by This Indenture. (a) The Bonds and the Interest Rate Swap are limited obligations of the Issuer payable solely from and secured as to the payment of the principal and Redemption Price thereof, and interest thereon, in accordance with their terms and the provisions of this Indenture solely by, the Trust Estate. Pursuant to the Granting Clauses of this Indenture, the Trust Estate has been conveyed, assigned and pledged to the payment of the principal and Redemption Price of and interest on the Bonds and the Interest Rate Swap Payments in accordance with their terms, and any other senior, parity and subordinate obligations of the Issuer secured by the lien of this Indenture, subject to (i) the pledge of and lien on the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparty and the Project Participants, and (ii) the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture. The Trust Estate thereby pledged and assigned shall immediately be subject to the lien of such pledge without any further physical delivery thereof or other further act, and the lien of such pledge shall be a first lien and shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice thereof.

(b) None of the Bonds, the Interest Rate Swap or the Commodity Swap constitute a debt or liability of the State or of any political subdivision thereof, other than as limited obligations of the Issuer, and the Issuer shall not be obligated to pay the principal or Redemption Price of, or interest on, the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments except from the funds provided therefor under this Indenture. Neither the faith and credit nor the taxing power of the State or of any political subdivision thereof, including the Issuer, or of any Project Participant is pledged to the payment of the principal or Redemption Price of and interest on the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments. The issuance of the Bonds and the execution and delivery of the Interest Rate Swap and the Commodity Swap shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment. The Issuer has no taxing power.

(c) Nothing contained in this Indenture shall be construed to prevent Issuer from acquiring, constructing or financing, through the issuance of its bonds, notes or other evidences of indebtedness, any facilities or supplies of Energy other than Energy Project; *provided* that such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate or any portion thereof, and neither the cost of such facilities or supplies of Energy nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate or any portion thereof.

Section 5.02. Establishment of Funds and Accounts. (a) The following Funds and Accounts are hereby established, each of which shall be held by the Trustee except as indicated below:

(i) Project Fund,

(ii) Revenue Fund,

(iii) Operating Fund,

(iv) Debt Service Fund, consisting of the Debt Service Account (and within such Account, a Capitalized Interest Subaccount) and the Redemption Account,

(v) Commodity Swap Payment Fund,

(vi) General Reserve Fund[, consisting of a Working Capital Account],

(vii) Energy Remarketing Reserve Fund, consisting of a Remediation Account,

(viii) Assignment Payment Fund,

(ix) Bond Purchase Fund established pursuant to Section 4.15, consisting of the Issuer Purchase Account and the Remarketing Proceeds Account, and

(x) Administrative Fee Fund, to be held by Issuer.

(b) Within the Funds and Accounts established hereunder and held by the Trustee, the Trustee may create additional Accounts in any Fund or subaccounts in any Accounts as may facilitate the administration of this Indenture. Issuer may, by Supplemental Indenture, with the prior written approval of the Trustee, establish one or more additional accounts or subaccounts. By Supplemental Indenture, Issuer may also (i) establish custodial accounts to be held by the Trustee as custodian to receive Revenues paid by the Project Participants under the Energy Supply Contracts, and (ii) provide for the application of such amounts for transfer to the Revenue Fund and for such other purposes as may be specified therein.

Section 5.03. Project Fund. (a) There shall be paid into the Project Fund proceeds of the Bonds in the amount specified by Written Request of Issuer, and there may be paid into the Project Fund, at the option of Issuer, any moneys received for or in connection with Energy Project by Issuer from any other source, unless required to be otherwise applied as provided by this Indenture. Upon delivery of the Bonds, the Trustee shall immediately transfer from the Project Fund into the Capitalized Interest Subaccount of the Debt Service Account an amount, specified by Written Request of Issuer, representing capitalized interest on the Bonds to the date set forth in such Written Request. Except as otherwise provided in this Section 5.03, amounts in Project Fund shall be applied by Issuer to pay the Cost of Acquisition and any capitalized interest on the Series 2021A Bonds.

(b) Before any payment is made by the Trustee from the Project Fund, Issuer shall file with the Trustee a Written Request of Issuer, showing with respect to each payment to be made, the name of the Person to whom payment is due and the amount to be paid, and stating that the obligation to be paid was incurred and is a proper charge against the Project Fund. To the extent

that the Written Request includes amounts to be paid pursuant to the Energy Purchase Agreement, copies of the invoices or requests for direct payments submitted under the Energy Purchase Agreement shall be attached to the Written Request. Each such Written Request shall be sufficient evidence to the Trustee: (i) that obligations in the stated amounts have been incurred by Issuer and that each item thereof is a proper charge against the Project Fund; and (ii) that there has not been filed with or served upon Issuer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the Persons named in such Written Request which has not been released or will not be released simultaneously with the payment of such obligation other than materialmen's or mechanics' liens accruing by mere operation of law.

(c) Upon receipt of each such Written Request, the Trustee shall pay the amounts set forth therein as directed by the terms thereof.

(d) Notwithstanding any of the other provisions of this Section, to the extent that other moneys are not available therefor, amounts in Project Fund shall be applied to the payment of principal of and interest on Bonds when due.

(e) Upon Written Direction of Issuer, but not earlier than six months after the date of delivery of the Bonds, the Trustee shall transfer to the Revenue Fund any amounts remaining on deposit in Project Fund.

Section 5.04. Revenues and Revenue Fund; Other Amounts. (a) All Revenues shall be deposited promptly by the Trustee upon receipt thereof into the Revenue Fund; *provided* that, for the avoidance of doubt, if any amounts are received from a Project Participant for which Outstanding Sold Receivables exist, the Trustee shall promptly cause any such receipts to be paid to the Energy Supplier to the extent of such Outstanding Sold Receivables without setoff of any kind in accordance with Section 2.7 of the Receivables Purchase Provisions and any remaining amounts received from such Project Participant shall be deposited into the Revenue Fund.

(b) In the event that any Specified Project Participant fails to pay the amount due under its Energy Supply Contract, the Trustee shall perform the following actions on behalf of Issuer under Section 2.1 of the Receivables Purchase Provisions: (i) provide a preliminary notice by email to Issuer and the Energy Supplier that a Specified Project Participant will fail to make a payment as soon as practicable after becoming aware that a payment default will occur and in any event no later than the end of the calendar day on which the relevant payment default occurs, and (ii) prepare and deliver to the Energy Supplier a Put Option Notice by 12:00 p.m. New York City time on the Business Day following any such payment default, *provided* that the amount of Put Receivables to be sold pursuant to such Put Option Notice shall not exceed the Maximum Monthly Amount. On the twenty-fourth day of the Month in which such Put Option Notice was delivered (or if such day is not a Business Day, the next Business Day following the twenty-fourth day of such Month), the Trustee shall deliver to the Energy Supplier the bill of sale and certificates required by Section 2.3(a) of the Receivables Purchase Provisions. The Trustee is hereby authorized to sell the Put Receivables then owed by the Specified Project Participants under their respective Energy Supply Contracts pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. All amounts received by the Trustee

pursuant to the Receivables Purchase Provisions in respect of Put Receivables shall be deposited in the Revenue Fund for application pursuant to Section 5.05.

(c) Upon receipt of the preliminary notice from the Trustee pursuant to (b)(i) above, Issuer shall:

(i) in consultation with the Energy Supplier, determine the amount of the Net Participant Shortfall Amount, if any, resulting from such failure to pay; and

(ii) give prompt written notice of the amounts of such Net Participant Shortfall Amount, if any, and the amount of such nonpayment and the resulting Net Participant Shortfall Amount, to the Trustee, the Energy Supplier and the Commodity Swap Counterparty.

(d) The following amounts, which are payable to the Trustee but do not constitute Revenues, shall be applied by the Trustee as follows:

(i) any Termination Payment shall be deposited directly into the Redemption Account of the Debt Service Fund as provided in Section 5.08;

(ii) any Assignment Payment shall be deposited directly into the Assignment Payment Fund as provided in Section 5.12;

(iii) amounts received from the Energy Supplier under the Receivables Purchase Provisions in respect of Call Receivables shall be deposited into the Commodity Swap Payment Fund as provided herein;

(iv) amounts representing the Project Administration Fee shall be paid as received to Issuer into the Administrative Fee Fund;

(v) any Interest Rate Swap Receipts shall be deposited directly into the Debt Service Account as provided in Section 2.13; and

(vi) any amounts required by Section 5.11 to be deposited into the Energy Remarketing Reserve Fund shall be deposited directly therein.

Section 5.05. Payments from Revenue Fund. (a) In each Month during which there is a deposit of Revenues into the Revenue Fund (but in no case later than the respective dates set forth below), the Trustee shall apply the amounts on deposit in the Revenue Fund, to the extent available, for credit or deposit to the Funds and Accounts indicated below, in the amounts described below (such application to be made in such a manner so as to assure good funds are available on the respective dates set forth below) in the following order of priority:

(i) To the Administrative Fee Fund, not later than the twenty-fifth day of such Month, the amounts required pursuant to Section 5.14;

(ii) To the Operating Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount, if any, required so that the balance therein shall equal the amount estimated to be necessary for the payment of Operating Expenses coming due for the following Month (but no such payments or expenses for any prior Month);

(iii) Subject to the provisos below, to the Debt Service Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day) for the credit to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in Schedule II hereto, or (B) the amount necessary to cause the cumulative Scheduled Debt Service Deposits to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

(iv) To the Commodity Swap Payment Fund, on or before the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

(v) To the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Call Receivables and the payment of interest on all Call Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

provided, however, that if a Project Participant's payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred under clause (iii) above to the extent necessary such that the amount available for transfer under clause (iv) above is not less than (A) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (B) the sum of all Net Participant Shortfall Amounts for such Month; and

provided further, the amount required to be transferred to the Debt Service Account pursuant to clause (iii) above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

(b) If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified on Schedule II, the Trustee shall immediately notify Issuer of such deficiency and the Trustee shall (i) if Issuer has not previously done so, cause Issuer to suspend all deliveries of all quantities of Energy under an Energy Supply Contract to any Project Participant that is in default thereunder, and (ii) promptly give notice to the Energy Supplier to follow the Remarketing Provisions.

(c) In each Month during which (i) there is a deposit of Revenues into the Revenue Fund and (ii) payment of a Principal Installment is due, after making such transfers, credits and deposits

as required by paragraph (a) above and after the applicable Principal Installment payment date, the Trustee shall credit to the General Reserve Fund the remaining balance in the Revenue Fund.

(d) So long as there shall be held in the Debt Service Fund an amount sufficient to pay in full all Outstanding Bonds and Interest Rate Swap Payments in accordance with their terms (including principal or applicable Sinking Fund Installments and interest thereon), no transfers shall be required to be made to the Debt Service Fund.

Section 5.06. Operating Fund. (a) Amounts credited to the Operating Fund shall be applied from time to time by the Trustee to the payment of (i) first, Rebate Payments, and (ii) second, any other Operating Expenses then due and payable.

(b) Amounts credited to the Operating Fund that the Trustee, on the last Business Day of each Month, determines to be in excess of the requirements of such Fund for such Month, shall be applied to make up any deficiencies in the Debt Service Account. Any balance of such excess not required to be so applied shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

Section 5.07. Debt Service Fund—Debt Service Account. (a) The amounts deposited into the Debt Service Account pursuant to Section 5.05(a)(iii) shall be held in such Account and applied to the payment of the Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date; *provided* that, for the purposes of computing the amount to be deposited in such Account, there shall be excluded from the required deposit the amount, if any, on deposit in the Capitalized Interest Subaccount or set aside in the Debt Service Account from the proceeds of Bonds (including amounts, if any, transferred thereto from the Project Fund) for the payment of interest on the Bonds. Amounts in the Capitalized Interest Subaccount shall be applied to Debt Service prior to other monies held within the Debt Service Account.

(b) The Trustee shall pay out of the Debt Service Account to the Paying Agent: (i) on or before each Interest Payment Date, the amount required for the interest on the Bonds payable on such date; (ii) on or before each Bond Payment Date, the Interest Rate Swap Payments then due, (iii) on or before the Bond Payment Date on which a Principal Installment is due, the amount required for the Principal Installment payable on such date; and (iv) on or before any redemption date, the amount required for the payment of the Redemption Price of and accrued interest on such Bonds then to be redeemed; *provided, however,* that if with respect to any Bonds or portions thereof the amounts due on any such Bond Payment Date and/or redemption date are intended to be paid from a source other than amounts in the Debt Service Account prior to any application of amounts in the Debt Service Account to such payments, then the Trustee (after Written Notice from Issuer to the Trustee that Issuer intends to make payments from a source other than amounts in the Debt Service Account) shall not pay any such amounts to the Paying Agent until such amounts have failed to be provided from such other source at the time required and if any such amounts due are paid from such other source the Trustee shall apply the amounts in the Debt Service Account to provide reimbursement for such payment from such other source as provided in the agreement governing reimbursement of such amounts to such other source. Such amounts shall be applied by the Paying Agent on and after the due dates thereof. The Trustee shall also pay

out of the Debt Service Account the accrued interest included in the purchase price of Bonds purchased for retirement.

(c) Amounts accumulated in the Debt Service Account with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) shall, if so directed by Issuer in a Written Request delivered not less than 30 days before the due date of such Sinking Fund Installment, be applied by the Trustee to (i) the purchase of Bonds of the maturity for which such Sinking Fund Installment was established, (ii) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms, or (iii) any combination of (i) and (ii). All purchases of any Bonds pursuant to this subsection (c) shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made in such manner as Issuer shall direct the Trustee in writing. The applicable sinking fund Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Debt Service Account until such Sinking Fund Installment date, for the purpose of calculating the amount of such Account. As soon as practicable after the thirtieth day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for the redemption on such due date, by giving notice as required by this Indenture, Bonds of maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after making allowance for any Bonds purchased or redeemed pursuant to Section 5.10 which Issuer has directed the Trustee in writing to apply as a credit against such Sinking Fund Installment as provided in Section 5.10(c). The Trustee shall pay out of the Debt Service Account to the Paying Agent, on or before such redemption date (or maturity date), the amount required for the redemption of the Bonds so called for redemption (or for the payment of such Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment). All expenses in connection with the purchase or redemption of Bonds shall be paid by Issuer in such manner as Issuer shall direct the Trustee in writing from the Operating Fund.

All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10 that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee, shall thereupon be promptly cancelled (or deemed to have been cancelled).

(d) Amounts accumulated in the Debt Service Account with respect to any principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established (together with amounts accumulated therein with respect to interest on such Bonds) shall, upon the reasonable prior Written Direction of Issuer, be applied by the Trustee on or prior to the due date thereof, to (i) the purchase of such Bonds or (ii) the redemption at the principal amount of such Bonds, if then redeemable by their terms. All purchases of any Bonds pursuant to this subsection (d) shall be made at prices not exceeding the principal amount of such Bonds plus accrued interest, and such purchases shall be made in such manner as Issuer shall determine. The principal amount of any Bonds so purchased or redeemed shall be deemed to constitute part of the

Debt Service Account until such due date, for the purpose of calculating the amount of such Account.

(e) The amount deposited in the Debt Service Account on the Issue Date of any Series of Bonds shall be set aside and applied to the payment of interest on the Bonds and any Interest Rate Swap Payments.

(f) In the event of the refunding or defeasance of any Bonds, the Trustee shall, if directed by Issuer in writing, withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts with the Trustee to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded or defeased; *provided* that such withdrawal shall not be made unless immediately thereafter Bonds being refunded or defeased shall be deemed to have been paid pursuant to Section 12.01(b). In the event of such refunding or defeasance, Issuer may direct the Trustee to withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts in any Fund or Account hereunder; *provided, however*, that such withdrawal shall not be made unless the Bonds being defeased shall be deemed to have been paid pursuant to Section 12.01(b) and *provided, further*, that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held hereunder.

(g) Any amount remaining in the Debt Service Account after a date for payment of a Principal Installment shall, to the extent not required to be retained therein for purposes of making future payments, be deposited in the Revenue Fund.

Section 5.08. Debt Service Fund–Redemption Account. (a) In the event of an early termination of the Energy Purchase Agreement, Issuer shall direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of Issuer. The Trustee shall deposit the Termination Payment into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the redemption of Outstanding Bonds pursuant to Section 4.01.

(b) Any amounts remaining on deposit in the Redemption Account following the redemption and payment of all Outstanding Bonds shall be applied by the Trustee first to pay any Swap Payment Deficiency, second to repurchase any Put Receivables or Call Receivables owned by the Energy Supplier, and third, upon Written Direction of Issuer to the Trustee, shall be transferred to the Revenue Fund.

(c) For the avoidance of doubt, no Extraordinary Expenses shall be paid from the Redemption Account.

Section 5.09. Commodity Swap Payment Fund. (a) Amounts credited to the Commodity Swap Payment Fund shall be applied from time to time by the Trustee to the payment of the Commodity Swap Payments when due.

(b) In the event that (i) any Specified Project Participant fails to pay the amount due under its Energy Supply Contract, (ii) as of the next Business Day the Trustee determines that after taking into account amounts to be transferred into the Commodity Swap Payment Fund pursuant to Section 5.05(a)(iv), there is or will be a Swap Payment Deficiency, the Trustee shall prepare and deliver to the Energy Supplier a Call Receivables Offer pursuant to Section 2.2(a) of the Receivables Purchase Provisions. If the Energy Supplier elects to purchase Call Receivables pursuant to such Call Receivables Offer, which election shall not be later than the Business Day following receipt by the Energy Supplier of the Call Receivables Offer, the Energy Supplier shall deliver to the Trustee the Call Option Notice setting forth the purchase date, which shall be the twenty-fifth day of the Month in which the Energy Supplier receives the Call Receivables Offer (or if such day is not a Business Day, the next succeeding Business Day). The Trustee is hereby authorized to sell the Call Receivables then owed by the Specified Project Participants pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. If the Energy Supplier elects to purchase such Call Receivables, all amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Call Receivables purchased pursuant to this Section 5.09(b) shall be deposited in the Commodity Swap Payment Fund and applied to payment of Commodity Swap Payments.

(c) Within one Business Day after the Energy Supplier delivers a Call Option Notice or is deemed not to have exercised its right to purchase Call Receivables pursuant to the Receivables Purchase Provisions, the Trustee shall deliver written notice to the Commodity Swap Counterparty indicating whether the Energy Supplier has elected to purchase Call Receivables pursuant to the Call Receivables Offer sufficient to increase the balance in the Commodity Swap Payment Fund to an amount equal to the next succeeding Commodity Swap Payment.

(d) The Trustee shall deliver to the Custodian pursuant to the Custodial Agreements, written notice as follows: (i) on any Business Day on which the Trustee delivers a Call Receivables Offer to the Energy Supplier pursuant to Section 2.2(a) of the Receivables Purchase Provisions, written notice that a Swap Payment Deficiency exists and the amount of such Swap Payment Deficiency; (ii) on any Business Day on which the Energy Supplier is required to make an election to purchase Call Receivables pursuant to Section 2.2(b) of the Receivables Purchase Provisions, written notice as to whether the Energy Supplier has elected to purchase such Call Receivables and, if so, the purchase date of such Call Receivables; and (iii) if the Energy Supplier has elected to purchase Call Receivables, on the purchase date thereof written notice that the purchase price has been received by the Trustee in immediately available funds.

(e) Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

Section 5.10. General Reserve Fund. (a) The Trustee shall apply moneys on deposit in the General Reserve Fund in the following amounts and in the following order of priority: *first,* for deposit into the Debt Service Account, the amount necessary (or all of the moneys in the General Reserve Fund if less than the amount necessary) to make up any deficiencies in the deposits to such Account required by Section 5.05(a)(iii); *second,* for deposit into the Commodity Swap

Payment Fund, the amount necessary to cause the balance therein to equal a Commodity Swap Payment that is then due; and *third* for deposit into the Operating Fund, the amount necessary for the payment of any Operating Expenses then due and payable and for which other funds are not available under this Indenture.

(b) Amounts on deposit in the General Reserve Fund not required to meet a deficiency or to make a deposit as provided in subsection (a) above shall be applied by the Trustee upon the Written Request of Issuer to the following in the order listed below:

(i) payment of Extraordinary Expenses;

(ii) payment of any fees owed pursuant to any Qualified Investments;

(iii) annual refunds to Project Participants pursuant to the Energy Supply Contracts;

(iv) the purchase or redemption of Bonds and expenses in connection with the purchase or redemption of such Bonds or any reserves which Issuer determines shall be required for such purposes; and

(viii) any other lawful purpose of Issuer under the Act;

provided, however, that, subject to the provisions of subsection (a) of this Section, amounts credited to the General Reserve Fund and required by this Indenture to be applied to the purchase or redemption of Bonds shall be applied to such purpose. [There is hereby created a Working Capital Account of the General Reserve Fund that may be used for any of the purposes contemplated in this Section 5.11(b) at the Written Request of Issuer. Issuer may deposit funds that are not part of the Trust Estate into the Working Capital Account of the General Reserve Fund from time to time.]

(c) If at any time Bonds of any maturity for which Sinking Fund Installments shall have been established are (i) purchased or redeemed other than pursuant to Section 5.07(d) or (ii) deemed to have been paid pursuant to Section 12.01(b) and, with respect to such Bonds which have been deemed paid, irrevocable written instructions have been given by Issuer to the Trustee to redeem or purchase the same on or prior to the due date of the Sinking Fund Installment to be credited under this subsection (c), Issuer may from time to time and at any time by Written Direction to the Trustee specify the portion, if any, of such Bonds so purchased, redeemed or deemed to have been paid and not previously applied as a credit against any Sinking Fund Installment which are to be credited against future Sinking Fund Installments. Such direction shall specify the amounts of such Bonds to be applied as a credit against each Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Bonds are to be applied as a credit; *provided, however,* that none of such Bonds may be applied as a credit against a Sinking Fund Installment to become due less than 45 days after such written notice is delivered to the Trustee. All such Bonds to be applied as a credit shall be surrendered to the Trustee for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment

remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

Section 5.11. Energy Remarketing Reserve Fund. There shall be paid by the Trustee into the Remediation Account of the Energy Remarketing Reserve Fund the amounts, as directed in a Written Direction of Issuer, specified in [Section 5(e)(i)] of the Remarketing Provisions. In the case of a Remediation Remarketing (as defined in the Remarketing Provisions) pursuant to [Section 8] of the Remarketing Provisions, amounts shall be released from the Remediation Account upon such remarketing and applied pursuant to a Written Direction of Issuer as follows: (a) if the proceeds received by the Trustee from the remarketing equal or exceed the Remediation Remarketing Purchase Price, the portion of the Remediation Account allocable to such remarketing shall be transferred to the General Reserve Fund, and (b) if the proceeds received by the Trustee from the remarketing are less than the Remediation Remarketing Purchase Price, then (x) the portion of the Remediation Account of the Energy Remarketing Reserve Fund allocable to such remarketing shall be used to make a payment to the Energy Supplier in an amount equal to the excess of such Remediation Remarketing Purchase Price over such proceeds received by Issuer from the remarketing, and (y) any remaining amounts allocable to such remarketing shall be transferred to the General Reserve Fund. For purposes of this Section 5.11(a), the portion of the Remediation Account of the Energy Remarketing Reserve Fund specified in writing by Issuer to the Trustee as the amount allocable to a remarketing shall consist of the product of (i) a fraction, the numerator of which is the purchase price of the Energy to be remarketed, and the denominator of which is the aggregate amount previously received by Issuer from the sale of such Energy in Non-Private Business Sales (as defined in the Remarketing Provisions) or Private Business Sales (as defined in the Remarketing Provisions) that, as of the time of the remarketing, has not been remediated in accordance with [Section 8] of the Remarketing Provisions, multiplied by (ii) the balance of the Remediation Account of the Energy Remarketing Reserve Fund at the time of the remarketing. ***[NTD: To be updated to include participant rebate accounts.]***

Section 5.12. Assignment Payment Fund. In connection with the issuance of Refunding Bonds, any Assignment Payment received from the Energy Supplier shall be deposited into the Assignment Payment Fund to be transferred to the replacement energy supplier, *provided, however,* that if the existing Bonds have not been redeemed or defeased on or before the Mandatory Purchase Date, in whole, by the Refunding Bonds, all or a portion of the Assignment Payment shall be transferred to the Trustee for deposit as directed by Issuer in writing to the Redemption Account in Section 5.08, along with the proceeds of the Refunding Bonds, in order to redeem all of the Outstanding Bonds.

Section 5.13. Purchases of Bonds. Except as otherwise provided in Section 5.07, any purchase of Bonds (or portions thereof) by or at the direction of Issuer pursuant to this Indenture may be made with or without tenders of Bonds and at either public or private sale, in such manner as Issuer may determine.

Section 5.14. [Administrative Fee Fund. Deposits shall be made to the Administrative Fee Fund each Month for administrative fees of Issuer, as directed in a Written Direction of Issuer,

from amounts received pursuant to the Energy Supply Contracts or from the remarketing or other sale of Energy. Issuer administrative fees shall not exceed for any Month and any Energy Supply Contract the quantity of Energy required to be delivered under the Power Supply Contracts during such Month multiplied by $[____] per MWh (each as determined by Issuer and confirmed in such Written Direction to the Trustee). Payments of such deposits into the Administrative Fee Fund shall be identified as such to the Trustee by Issuer (or Issuer shall cause the related Project Participants to do so) by Written Direction or Electronic Means no later than the Business Day preceding the day on which such payment is to be made. ***[NTD: Form of compensation to CCCFA to be confirmed.]***

ARTICLE VI

DEPOSITORIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 6.01. Depositories. (a) All moneys held by the Trustee under the provisions of this Indenture shall constitute trust funds and the Trustee may deposit such moneys with one or more 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 Issuer, *provided* that such deposits shall permit the moneys so held to be available for use at the time when needed. Any such deposit may be made in the commercial banking department of any Fiduciary, which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. All moneys held by any Fiduciary, as such, may be deposited by such Fiduciary in its banking department on demand or, if and to the extent directed by Issuer and acceptable to such Fiduciary, on time deposit, *provided* that such moneys on deposit be available for use at the time when needed. Such Fiduciary shall allow and credit on such moneys such interest, if any, as it

customarily allows upon similar funds of similar size and under similar conditions or as required by law.

(b) All moneys held under this Indenture by the Trustee, Issuer or any Depository shall be held in such manner as may then be required by applicable federal or State laws and regulations and applicable state laws and regulations of the state in which such Depository is located, regarding security for, or granting a preference in the case of, the deposit of public or trust funds or, in the absence of such laws and regulations, shall be either (i) continuously or fully insured by the Federal Deposit Insurance Corporation, or (ii) continuously and fully secured, to the extent not insured by the Federal Deposit Insurance Corporation, by lodging with the Trustee, as custodian, as collateral security, Qualified Investments having a market value (exclusive of accrued interest) not less than the amount of such moneys (or portion thereof not insured by the Federal Deposit Insurance Corporation); *provided, however*, that, to the extent permitted by law, it shall not be necessary for the Fiduciaries to give security under this subsection (b) for the deposit of any moneys with them held in trust and set aside by them for the payment of the principal or Redemption Price of or interest on any Bonds, or for the Trustee, Issuer or any Depository to give security for any moneys which shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

(c) All moneys deposited with the Trustee and each Depository shall be credited to the particular Fund or Account to which such moneys belong and, except as provided with respect to the investment of moneys in Qualified Investments in Section 6.03, the moneys credited to each particular Fund or Account shall be kept separate and apart from, and not commingled with, any moneys credited to any other Fund or Account or any other moneys deposited with the Trustee, Issuer and each Depository, except as provided in Section 6.03.

Section 6.03. Investment of Certain Funds. Moneys held in the Debt Service Account shall be invested and reinvested by the Trustee at the Written Direction of Issuer to the fullest extent practicable in Qualified Investments specified in such Written Direction which mature or are payable not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Accounts and may take the form of a Debt Service Fund Agreement. To the extent moneys held in the Debt Service Account are invested in a Debt Service Fund Agreement, Issuer covenants and agrees that it will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with such Debt Service Fund Agreement without the written consent of the Trustee and the delivery to the Trustee of a Rating Confirmation with respect to such amendment. Moneys held in the Revenue Fund and the Project Fund may be invested and reinvested by the Trustee at the Written Direction of Issuer in Qualified Investments specified in such Written Direction which mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Funds. Moneys in the Operating Fund (other than moneys in the Operating Fund held with respect to Rebate Payments) may be invested at the Written Direction of Issuer in Qualified Investments specified in such Written Direction which mature within twelve months or which provide funds as needed; moneys held in the Operating Fund with respect to Rebate Payments shall be invested at the Written Direction of Issuer in Qualified Investments specified in such Written Direction at fair market value; and moneys in the General Reserve Fund and the Energy Remarketing Reserve Fund may be invested at the Written Direction of Issuer in

Qualified Investments specified in such Written Direction; in any case the Qualified Investments in such Funds or in the Accounts therein shall mature not later than such times as shall be necessary to provide moneys when needed to provide payments from such Funds or Accounts. The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of Issuer and may rely on such investment directions without verifying the suitability or legality of such investment and any deposit or investment directed by Issuer shall constitute a certification by Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of Issuer. The Trustee shall be entitled to rely in good faith on any Written Direction of Issuer as to the suitability and legality of the directed investment and any deposit or investment directed by Issuer shall constitute a certification by Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

Interest earned on any moneys or investments in the Funds and Accounts established hereunder shall be paid into the Revenue Fund, other than interest earned on any moneys or investments in (i) the Redemption Account in the Debt Service Fund, (ii) the Operating Fund relating to Rebate Payments, (iii) the Administrative Fee Fund and (iv) the Energy Remarketing Reserve Fund. Such interest shall be held in such respective Fund or Account for the purposes thereof. If no written investment directions have been delivered to the Trustee for any Fund or Account, moneys shall be held there uninvested by the Trustee.

Nothing in this Indenture shall prevent any Qualified Investments acquired as investments of or security for Funds held under this Indenture from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

Nothing in this Indenture shall preclude the Trustee from investing or reinvesting moneys that it holds in the Funds and Accounts established pursuant to this Indenture through its bond department; *provided, however,* that Issuer may, in its discretion, give a Written Direction to the Trustee that such moneys be invested or reinvested in a manner other than through such bond department.

To the extent any Qualified Investment is insured, guaranteed or otherwise supported by any secondary facility, the Trustee shall make a claim under such facility at such time as shall be required to receive payment thereunder not later than the date required to make any necessary deposit pursuant to Section 5.05 or Section 5.09 or otherwise under Article V.

Section 6.04. Valuation and Sale of Investments. Obligations purchased as an investment of moneys in any Fund created under the provisions of this Indenture shall be deemed at all times to be a part of such Fund and any profit realized from the liquidation of such investment shall be credited to such Fund, and any loss resulting from the liquidation of such investment shall be charged to the respective Fund.

In computing the amount in any Fund created under the provisions of this Indenture for any purpose provided in this Indenture, obligations purchased as an investment of moneys therein shall be valued at the lower of market value or the amortized cost thereof. The accrued interest paid in connection with the purchase of any obligation shall be included in the value thereof until interest on such obligation is paid. Such computation shall be determined at the Written Direction of Issuer to the Trustee as of each Principal Installment payment date and at such other times as Issuer shall reasonably determine. Guaranteed investment contracts or similar agreements shall be valued at their face value to the extent that they provide for withdrawals without market adjustment or penalty when they are required to provide payment pursuant to this Indenture.

Except as otherwise provided in this Indenture, the Trustee shall use reasonable efforts to sell at the best price obtainable, or present for redemption, any obligation so purchased as an investment whenever it shall be requested to do so by a Written Request of Issuer. Whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund held by the Trustee or Issuer, Issuer or the Trustee at the Written Direction of Issuer shall use reasonable efforts to sell at the best price obtainable or present for redemption such obligation or obligations designated by an Authorized Officer in a Written Direction of Issuer to the Trustee as necessary to provide sufficient moneys for such payment or transfer. The Trustee shall not be required to provide any brokerage information.

The Trustee shall not be liable or responsible for any loss, fee, tax or other charge resulting from any such investment, sale or presentation for redemption made in the manner provided above in Section 6.02, Section 6.03 or Section 6.04.

ARTICLE VII

PARTICULAR COVENANTS OF ISSUER

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

Section 7.01. Payment of Bonds. Issuer shall duly and punctually pay or cause to be paid, but solely from the Trust Estate, the principal or Redemption Price, if any, of every Bond and the interest thereon, at the dates and places and in the manner provided in the Bonds, according to the true intent and meaning thereof.

Section 7.02. Extension of Payment of Bonds. Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement, and in case the maturity of any of the Bonds or the time for payment of any such

claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under this Indenture, to the benefit of this Indenture or to any payment out of Revenues or Funds established by this Indenture, including the investment income, if any, thereof, pledged under this Indenture or the moneys (except moneys held in trust for the payment of particular Bonds or claims for interest pursuant to this Indenture) held by the Fiduciaries, except subject to the prior payment of the principal of all Bonds Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

Section 7.03. Offices for Servicing Bonds. Pursuant to Section 2.02, Issuer has appointed the Trustee as Bond Registrar and Paying Agent for the Bonds and the Trustee hereby accepts such appointments. The Trustee shall at all times maintain one or more agencies or offices where Bonds may be presented for registration exchange or transfer, where principal and Redemption Price of and interest on the Bonds may be paid, where reports, statements and other documents furnished to the Trustee hereunder may be inspected and where notices, demands and other documents may be served upon Issuer in respect of the Bonds or of this Indenture, and the Trustee shall continuously maintain or make arrangements to provide such services. Issuer shall maintain one or more offices or agencies where notices, demands and other documents may be served upon Issuer in respect of the Bonds or this Indenture, and Issuer shall continuously maintain or make arrangements to provide such services.

Section 7.04. Further Assurance. At any and all times Issuer shall, as far as it may be authorized by law, comply with any reasonable request of the Trustee to pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular the rights, Revenues and other moneys, securities and funds hereby pledged, or intended so to be, or which Issuer may become bound to pledge.

Section 7.05. Power To Issue Bonds and Pledge the Trust Estate. Issuer is duly authorized under all applicable laws to create and issue the Bonds and to execute and deliver this Indenture and to pledge the Trust Estate, in the manner and to the extent provided in this Indenture. Except to the extent otherwise provided in or contemplated by this Indenture, the Trust Estate will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the security interest, the pledge and assignment created by this Indenture, and all action on the part of Issuer to that end has been and will be duly and validly taken. The Bonds and the provisions of this Indenture are and will be the valid and legally enforceable limited obligations of Issuer in accordance with their terms and the terms of this Indenture. Issuer shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Revenues and other moneys, securities and funds pledged under this Indenture and all the rights of the Bondholders under this Indenture against all claims and demands of all Persons whomsoever.

Section 7.06. Power To Fix and Collect Fees and Charges for the Sale of Energy. Issuer has, and, to the extent permitted by law, will have as long as any Bonds are Outstanding, good right and lawful power to fix, establish, maintain and collect fees and charges for the sale and

transmission of Energy or otherwise with respect to Energy Project, subject to the terms of the Energy Supply Contracts.

Section 7.07. Creation of Liens. [Except as expressly permitted under the terms of this Indenture, f]or 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. Annual Budget. [Prior to the beginning of each Fiscal Year, Issuer shall prepare and file with the Trustee an Annual Budget for such Fiscal Year which shall set forth in reasonable detail the estimated Revenues and Operating Expenses and other expenditures for Energy Project, the amounts estimated to be deposited into and expended from each Fund and Account established under this Indenture and such additional material as Issuer may determine. Issuer also may at any time adopt an amended Annual Budget for the remainder of the then current Fiscal Year. The Trustee shall only be a repository for the receipt of the Annual Budget and/or any amended Annual Budget and shall have no responsibility or liability with respect to verifying the accuracy of any Annual Budget or amended Annual Budget.] ***[NTD: To Be Discussed]***

Section 7.09. Limitations on Operating Expenses and Other Costs. Issuer shall not incur Operating Expenses in any Fiscal Year in excess of the reasonable and necessary amount of such Operating Expenses.

Section 7.10. Amendments to Energy Supply Contracts. Issuer will not consent or agree to or permit any termination or rescission of, assignment or novation (in whole or in part) by a Project Participant of, or amendment to or otherwise take any action under or in connection with any Energy Supply Contract that will impair the ability of Issuer to collect Revenues in each Fiscal Year which, together with the other amounts available therefor, shall provide an amount sufficient to pay:

(a) The amount estimated by Issuer to be required to be paid during such Fiscal Year into the Operating Fund;

(b) The amounts, if any, required to be paid during such Fiscal Year into the Debt Service Fund;

(c) The amounts, if any, to be paid during such Fiscal Year into any other Fund established under Section 5.02; and

(d) All other charges or liens whatsoever payable out of Revenues during such Fiscal Year;

provided that:

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

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

(iii) an Energy Supply Contract may be amended upon receipt of (A) a Rating Confirmation with respect to such amendment, and (B) to the extent such amendment would have a material adverse effect (including, but not limited to, a change in the timing of payments, the source of such payments, or Issuer's rights of collection thereof) upon the Receivables Purchase Provisions or the Commodity Swap, the consent of the Energy Supplier or the Commodity Swap Counterparty, respectively, such consent not to be unreasonably withheld or delayed;

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

(v) An Energy Supply Contract may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement.

Section 7.11. Energy Supply Contracts; Energy Remarketing. (a) Issuer shall cause all Revenues payable by the Project Participants under the Energy Supply Contracts to be payable directly to the Trustee for deposit into the Revenue Fund or custodial accounts established pursuant to Section 5.02(b). Issuer shall enforce the provisions of the Energy Supply Contracts, as well as any other contract or contracts entered into relating to Energy Project, and duly perform its covenants and agreements thereunder.

(b) In the event that any Project Participant fails to pay when due any amounts owed to Issuer under an Energy Supply Contract, Issuer shall:

(i) promptly exercise its right to suspend all Energy deliveries to such Project Participant; and

(ii) promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Energy Purchase Agreement for each Month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

(c) In the event that any Project Participant delivers a Remarketing Election Notice (as defined in each Energy Supply Contract) in respect of any Reset Period, then Issuer will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Provisions for each month of such Reset Period with respect to any quantities of Energy that would otherwise have been delivered to such Project Participant.

(d) For the avoidance of doubt, as of the date of this Indenture, the Energy Supply Contracts with the Project Participants set forth on Schedule I shall be the only Energy Supply Contracts until such time, if any, that an assignment or novation occurs in accordance with the requirements set forth above. Without prejudice to the rights of the Energy Supplier to remarket Energy under the Energy Purchase Agreement or to an assignment or novation of an Energy Supply Contract in compliance with this Section 7.11, Issuer may sell the quantities of Energy to be delivered under the Energy Purchase Agreement only pursuant to the Energy Supply Contracts. A copy of each Energy Supply Contract and any amendment to an Energy Supply Contract, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.12. Energy Purchase Agreement; Energy Supplier Guaranty. (a) 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 Issuer of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Energy Purchase Agreement. Issuer shall provide the Trustee with Written Notice of the Early Termination Payment Date (i) on the date on which a Failed Remarketing occurs, and (ii) in all other cases, not more than five (5) Business Days after such date is determined.

(c) Issuer will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with the Energy Purchase Agreement or the Energy Supplier Guaranty which will in any manner materially impair or materially adversely affect the rights of Issuer thereunder or the rights or security of the Bondholders under this Indenture; *provided* that the Energy Purchase Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation with respect to such assignment or amendment. The Energy Purchase Agreement may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement.

Copies of the Energy Purchase Agreement, the Energy Supplier Guaranty and any amendments thereto, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.13. [Reserved].

Section 7.14. Commodity Swap. Issuer shall cause all Commodity Swap Receipts and any other amounts payable to Issuer pursuant to the Commodity Swap to be collected and paid directly to the Trustee for deposit into the Revenue Fund. Issuer shall enforce the provisions of the Commodity Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify Issuer of any payment default that has occurred and is continuing on the part of the Commodity Swap Counterparty under the Commodity Swap. Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Commodity Swap that will impair the ability of Issuer to comply during the current or any future year with the provisions hereof. Issuer shall only exercise its right to terminate the Commodity Swap in compliance with Section 2.12(b). A copy of the Commodity Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Commodity Swap, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.15. Interest Rate Swap. Issuer shall cause all Interest Rate Swap Receipts or other amounts payable to Issuer pursuant to the Interest Rate Swap to be collected and paid to the Trustee for deposit into the Debt Service Account. Issuer shall enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify Issuer of any payment default that has occurred and is continuing on the part of the Interest Rate Swap Counterparty under the Interest Rate Swap. Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of Issuer to comply during the current or any future year with the provisions hereof. Issuer shall only exercise its right to terminate the Interest Rate Swap in compliance with Section 2.13(b). A copy of the Interest Rate Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Interest Rate Swap, certified by an Authorized Officer, shall be filed with the Trustee.

Section 7.16. Accounts and Reports. (a) Issuer shall keep or cause to be kept with respect to Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of this Indenture, in which complete and correct entries shall be made of its transactions relating to Energy Project, the amount of Revenues and the application thereof and each Fund and Account established under this Indenture and relating to its costs and charges under the Energy Supply Contracts and any other contracts for the sale or purchase of Energy, and which, together with the Energy Purchase Agreement and all contracts and all other books and papers of Issuer relating to Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of the Trustee and the Holders of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

(b) The Trustee shall advise Issuer promptly after the end of each month of the respective transactions during such month relating to each Fund and Account held by it under this Indenture.

(c) Issuer shall file with the Trustee (i) forthwith upon becoming aware of any Event of Default or default in the performance by Issuer of any covenant, agreement or condition contained in this Indenture, a Written Certificate of Issuer and specifying such Event of Default or default and (ii) within 180 days after the end of each Fiscal Year, commencing with the first Fiscal Year ending following the issuance of the Bonds, a Written Certificate of Issuer signed by an appropriate Authorized Officer stating whether, to the best of such Authorized Officer's knowledge and belief, Issuer has kept, observed, performed and fulfilled its covenants and obligations contained in this Indenture and that there does not exist at the date of such certificate any default by Issuer under this Indenture or any Event of Default or other event which, with the lapse of time specified in Section 8.01, would become an Event of Default, or, if any such default or Event of Default or other event shall so exist, specifying the same and the nature and status thereof.

(d) The reports, statements and other documents required to be furnished to the Trustee pursuant to any provisions of this Indenture shall be available for the inspection of Bondholders at all times during regular business hours at the designated corporate trust office of the Trustee (upon reasonable prior written notice of inspection delivered to the Trustee) and shall be mailed to each Bondholder who shall file a written request therefor with Issuer. Issuer may charge each Bondholder requesting such reports, statements and other documents a reasonable fee to cover reproduction, handling and postage.

Section 7.17. Payment of Taxes and Charges. Issuer will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of Issuer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of Issuer when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under this Indenture), and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which Issuer shall in good faith contest by proper legal proceedings if Issuer shall in all such cases have set aside on its books reserves deemed adequate by Issuer with respect thereto.

Section 7.18. Tax Covenants. (a) Issuer covenants that it shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any of the Bonds under Section 103 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder or, as applicable, would adversely affect the Subsidy Payments or receipt thereof by the Issuer or the Trustee. Without limiting the generality of the foregoing, Issuer covenants that it will (i) comply with the instructions and requirements of the Tax Agreement [and (ii) exercise commercially reasonable efforts to cause the Bonds to be redeemed (A) in such amount as may be necessary to maintain the exclusion from federal gross income of interest on the Bonds and (B) in whole in the event that interest on the Bonds becomes includible in federal gross income. Issuer further agrees to follow any directions provided by

Special Tax Counsel with respect to any such redemption.] This covenant shall survive payment in full or defeasance of the Bonds.

(b) In the event that at any time Issuer is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under this Indenture, Issuer shall so instruct the Trustee in writing as to the specific actions to be taken, and the Trustee shall take such action as specified in such instructions.

(c) Notwithstanding any other provisions of this Section, if Issuer shall provide to the Trustee an Opinion of Special Tax Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or the qualification of the Issuer to receive Subsidy Payments with respect to the applicable Series of Bonds, Issuer and the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Agreement, and the covenants hereunder shall be deemed to be modified to that extent.

(d) Notwithstanding any other provision of this Indenture to the contrary, upon Issuer's failure to observe or refusal to comply with the above covenants, the Holders of the Bonds, or the Trustee acting on their behalf pursuant to their written request and direction, shall be entitled to the rights and remedies provided to Bondholders under this Indenture based upon Issuer's failure to observe, or refusal to comply with, the above covenants. In connection with any action taken by it under this Section, the Trustee shall have the benefit of all of the protective provisions set forth in Article IX.

Section 7.19. General. (a) Issuer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of Issuer under the provisions of the Act and this Indenture.

(b) Issuer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to (other than the sale in the normal course of business of Energy to the Project Participants pursuant to the Energy Supply Contracts), or reorganize, reincorporate or reconstitute into or as, another entity unless, (i) prior to such event, Issuer receives confirmation from the Commodity Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Commodity Swap and confirmation from the Interest Rate Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Interest Rate Swap; and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of Issuer under the Commodity Swap and the Interest Rate Swap. ***[NTD: Conform to swaps.]***

(c) Issuer shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the ratings on the Bonds.

(d) Upon the date of authentication and delivery of any of the Bonds, all conditions, acts and things required by law and this Indenture to exist, to have happened and to have been

performed precedent to and in the issuance of such Bonds shall exist, have happened and have been performed, and the issuance of such Bonds, together with all other obligations of Issuer, shall comply in all respects with the applicable laws of the State.

Section 7.20. Bankruptcy. To the extent permitted by law, Issuer shall not, prior to the date which is one year and one day after the termination of this Indenture, acquiesce, petition, or otherwise invoke the process of any court or government authority for the purpose of commencing or sustaining a case under any federal or state bankruptcy, insolvency, or similar law or appointing a receiver, liquidator, assignee, trustee, custodian or sequestrator for any substantial part of its property, or ordering the winding up or liquidation of the affairs of Issuer. This covenant shall survive the termination of this Indenture.

Section 7.21. [Reserved].

Section 7.22. Replacement of Energy Supplier Guaranty. Issuer covenants that it shall not replace Morgan Stanley, as issuer of the Energy Supplier Guaranty, or replace any successor issuer thereof, in each case without obtaining a Rating Confirmation. For the avoidance of doubt, this Section 7.22 is in addition to, and does not override, any other provision of this Indenture or any other document relating to the replacement of the issuer of the Energy Supplier Guaranty.

Section 7.23. Avoidance of Failed Remarketing. Issuer covenants that it will exercise commercially reasonable efforts to avoid a Failed Remarketing.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) default shall be made in the due and punctual payment of the principal or Redemption Price or Purchase Price of any Bond when and as the same shall become due and payable, whether at maturity or by call for redemption or tender, or otherwise;

(b) default shall be made in the due and punctual payment of any installment of interest on any Bond or the unsatisfied balance of any Sinking Fund Installment therefor (except when such Sinking Fund Installment is due on the maturity date of such Bond), when and as such interest installment or Sinking Fund Installment shall become due and payable;

(c) default shall be made by Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and such default shall continue for a period of 60 days or, if such default cannot reasonably be remedied within such 60-day period, such longer period so long as diligent efforts are being made to remedy such default, after written notice thereof specifying such

default and requiring that it shall have been remedied and stating that such notice is a "Notice of Default" hereunder is given to Issuer by the Trustee or to Issuer and to the Trustee by the Holders of not less than 10% in principal amount of the Bonds Outstanding;

(d) default shall be made in the due and punctual payment of any Commodity Swap Payment or Interest Rate Swap Payment when and as the same shall become due and payable;

(e) Issuer shall commence a voluntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (*provided, however*, that such event shall not constitute an Event of Default hereunder unless in addition, (i) Issuer is unable to meet its debts with respect to Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or Energy Project, or shall authorize, apply for or consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefrom, or shall make any general assignment for the benefit of creditors, or shall make a written declaration or admission to the effect that it is unable to meet its debts with respect to Energy Project as such debts mature, or shall authorize or take any action in furtherance of any of the foregoing;

(f) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of Issuer in an involuntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (*provided, however*, that such event shall not constitute an Event of Default hereunder unless in addition, (i) Issuer is unable to meet its debts with respect to Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or Energy Project, or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefor, or a decree or order for the dissolution, liquidation or winding up of Issuer and its affairs or a decree or order finding or determining that Issuer is unable to meet its debts with respect to Energy Project as such debts mature, and any such decree or order shall remain unstayed and in effect for a period of [90] consecutive days; and

(g) there shall occur any other Event of Default specified in a Supplemental Indenture.

Section 8.02. Accounting and Examination of Records After Default. (a) Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of Issuer and all other records relating to Energy Project shall at all times during regular business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.

(b) Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, Issuer, upon demand of the Trustee, will account, as if it were the trustee of an

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) Issuer covenants that, if an Event of Default shall happen and shall not have been remedied, it shall upon the demand of the Trustee (i) take such additional actions on its part as shall be necessary to cause all Project Participants to make payments of all amounts due under the Energy Supply Contracts to the Trustee, (ii) take such additional actions on its part as shall be necessary to cause the Commodity Swap Counterparty to make payment of all amounts due under the Commodity Swap directly to the Trustee, (iii) take such additional actions on its part as shall be necessary to cause the Interest Rate Swap Counterparty to make payment of all amounts due under the Interest Rate Swap directly to the Trustee, (iv) execute and deliver such additional instruments that may be necessary to establish or confirm its pledge and assignment to the Trustee of its rights and remedies afforded Issuer under the Energy Supply Contracts, and (v) pay over or cause to be paid over to the Trustee any Revenues which have not been paid directly to the Trustee as promptly as practicable after receipt thereof. In addition, Issuer hereby irrevocably appoints the Trustee as its agent to issue notices (including notices to direct the remarketing of Energy) and to take any other actions that Issuer is required or permitted to take under the Energy Purchase Agreement, the Energy Supply Contracts, the Commodity Swap and the Interest Rate Swap. For the avoidance of doubt, the Energy Purchase Agreement, the Energy Supply Contracts and the Commodity Swap may be amended at any time for changes in Delivery Points as provided therein, without the consent of the Bondholders, any parties other than those to the relevant agreement, and without the provisions of opinions or other process hereunder. In exercising this agency power, and subject to the rights of the Energy Supplier with respect to the Energy Supply Contracts as set forth in the Receivables Purchase Provisions, the Trustee shall have the authority to take any such actions as it deems necessary under the Energy Purchase Agreement, the Energy Supply Contracts, the Energy Supplier Guaranty and the Commodity Swap. Notwithstanding this grant of agency power, Issuer shall retain, in the absence of any conflicting action by the Trustee, the right to exercise any rights for which it has appointed the Trustee as its agent in accordance with the foregoing; *provided, however*, if an Event of Default has occurred, the Trustee shall have the right to notify Issuer to cease exercising such rights and, upon receipt of such notice with a copy provided to the Energy Supplier under the Energy Purchase Agreement, the Project Participants under the Energy Supply Contracts, and the Commodity Swap Counterparty under the Commodity Swap, subject to the rights of the Energy Supplier with respect to the Energy Supply Contracts as set forth in the Receivables Purchase Provisions, the Trustee shall have exclusive authority to exercise such rights until such time as the Trustee issues a subsequent notice otherwise.

(b) During the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Revenues received by the Trustee pursuant to any right given or action taken under the provisions of this Article in accordance with Article V of this Indenture, after the payment of the reasonable fees, charges, expenses and liabilities of the Fiduciaries (including court costs and the fees and expenses of the Fiduciaries' counsel) payable to or incurred by the Fiduciaries in connection with the performance of their duties and the exercise of their rights hereunder, *provided* that (1) moneys held in the Debt Service Account shall not be used for purposes other than payment of the interest and principal or Redemption Price then due on the Bonds and the payment of Interest Rate Swap Payments then due under the Interest Rate Swap,

(2) moneys in the Commodity Swap Payment Fund shall be used first to pay any Commodity Swap Payments then due, and (3) moneys held in the General Reserve Fund shall not be used other than for the payment of the items specified in Section 5.10(a).

(c) If and whenever all overdue installments of interest on all Bonds, together with the reasonable charges, expenses and liabilities of the Fiduciaries, and all other sums payable or secured by Issuer under this Indenture, including the principal and Redemption Price of and accrued unpaid interest on all Bonds which shall then be payable by declaration or otherwise, shall either be paid by or for the account of Issuer, or provisions satisfactory to the Trustee shall be made for such payment, and all defaults under this Indenture or the Bonds shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over to Issuer all moneys, securities and funds then remaining unexpended in the hands of the Trustee (except moneys, securities and funds deposited or pledged, or required by the terms of this Indenture, particularly Section 5.02, to be deposited or pledged, with the Trustee), and thereupon Issuer and the Trustee shall be restored, respectively, to their former positions and rights under this Indenture. No such payment over to Issuer by the Trustee nor restoration of Issuer and the Trustee to their former positions and rights shall extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

Section 8.04. Appointment of Receiver. The Trustee shall have the right, upon the happening of an Event of Default, to apply in an appropriate proceeding for the appointment of a receiver of Energy Project.

Section 8.05. Proceedings Brought by Trustee. (a) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, by its agents and attorneys, may proceed, and upon written request of the Holders of not less than a majority in principal amount of the Bonds Outstanding and upon being indemnified to its satisfaction shall proceed, to protect and enforce its rights and the rights of the Holders of the Bonds under this Indenture forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against Issuer as if Issuer were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Indenture.

(b) All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at the trial or other proceedings, and any such suit or proceedings instituted by the Trustee shall be brought in its name.

(c) The Holders of not less than a majority in principal amount of the Bonds at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, *provided* that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Bondholders not parties to such direction.

(d) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled to exercise any and all rights and powers conferred in this Indenture and provided to be exercised by the Trustee upon the occurrence of any Event of Default.

(e) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the Holders of a majority in principal amount of the Bonds then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders.

Section 8.06. Restriction on Bondholder's Action. (a) No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Indenture or the execution of any trust under this Indenture or for any remedy under this Indenture, unless such Holder (i) shall have previously given to the Trustee written notice of the happening of an Event of Default, as provided in this Article, and the Holders of at least a majority in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, (ii) shall have offered it reasonable opportunity, either to exercise the powers granted in this Indenture or by the laws of the State or to institute such action, suit or proceeding in its own name, and (iii) shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and for the equal benefit of all Holders of the Outstanding Bonds, subject only to the provisions of Section 7.02.

(b) Nothing in this Indenture or in the Bonds shall affect or impair the obligation of Issuer, which is absolute and unconditional, to pay only from the Trust Estate, in accordance with the terms of this Indenture, at the respective dates of maturity and places therein expressed the principal of (and premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of its Bond.

Section 8.07. Remedies Not Exclusive. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity or by statute on or after the date of execution and delivery of this Indenture.

Section 8.08. Effect of Waiver and Other Circumstances. (a) No delay or omission of the Trustee or any Bondholder to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or be an acquiescence therein; and every power and remedy given by this Article VIII to the Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

(b) Prior to the declaration of maturity of the Bonds as provided in Section 8.01, the Holders of not less than a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Holders of all of the Bonds waive any past default under this Indenture and its consequences, except a default in the payment of interest on or principal of or premium (if any) on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 8.09. Notice of Default. The Trustee shall promptly mail written notice of the occurrence of any Event of Default to each registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of Issuer.

ARTICLE IX

CONCERNING THE FIDUCIARIES

Section 9.01. Acceptance by Trustee of Duties. The Trustee accepts the duties and obligations imposed upon it by this Indenture and the trusts hereby created, but only, however, upon the terms and conditions set forth in this Indenture.

Section 9.02. Paying Agents; Appointment and Acceptance of Duties. (a) Issuer shall appoint one or more Paying Agents for the Bonds, and may at any time or from time to time appoint one or more other Paying Agents. All Paying Agents appointed shall have the qualifications set forth in Section 9.13 for a successor Paying Agent. The Trustee is hereby appointed as initial Paying Agent.

(b) Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to Issuer and to the Trustee a written acceptance thereof.

(c) Unless otherwise provided, the principal corporate trust offices of the Paying Agents are designated as the respective offices or agencies of Issuer for the payment of the interest on and principal or Redemption Price of the Bonds.

Section 9.03. Responsibilities of Fiduciaries. (a) The recitals of fact herein and in the Bonds contained shall be taken as the statements of Issuer and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, and no Fiduciary shall incur any liability in respect thereof.

Furthermore, no Fiduciary shall be responsible for any offering documents (except for information provided by any Fiduciary for inclusion in such offering documents). The Trustee shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid by such Fiduciary in accordance with the provisions of this Indenture to Issuer or to any other Person. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or undertake any suit or proceeding under this Indenture or to enter any appearance in or defend any suit in respect thereof, or to advance any of its own moneys, expend or risk its own funds or otherwise incur any financial liability unless properly indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other anticipated disbursements, and against all liability except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. To the extent permitted by law, Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of any of its duties hereunder unless properly indemnified to its satisfaction. Subject to the provisions of subsection (b), no Fiduciary shall be liable in connection with the performance of its duties hereunder except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. Notwithstanding anything to the contrary, the permissive rights of any Fiduciary to do things enumerated under this Indenture shall not be construed as duties.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provision of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section 9.03 and Section 9.04.

(c) [Reserved].

(d) Notwithstanding anything to the contrary herein, Issuer acknowledges and agrees that the Trustee is not acting as the disclosure or dissemination agent for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934 in connection with any notice required to be posted with the Municipal Securities Rulemaking Board via its EMMA system.

Section 9.04. Evidence on Which Fiduciaries May Act. (a) Each Fiduciary, upon receipt of any notice, direction, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with a consultant, accountant or counsel, who may or may not be a consultant, accountant or counsel to Issuer, and

the opinion of such consultant, accountant or counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument.

(b) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of Issuer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Indenture upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Neither the Trustee, the Bond Registrar, the tender agent, nor the Paying Agent shall be bound to recognize any Person as a Bondholder or to take any action at its request unless its Bond shall be deposited with such entity or satisfactory evidence of the ownership of such Bond shall be furnished to such entity.

(c) The Trustee shall have the right to accept and act upon directions given pursuant to this Indenture, or any other document reasonably relating to the Bonds and delivered using Electronic Means; *provided, however*, that Issuer shall provide to the Trustee a Written Certificate of Issuer listing Authorized Officers with the authority to provide such directions and containing specimen signatures of such Authorized Officers, which Written Certificate of Issuer shall be amended whenever a person is to be added or deleted from the listing. If Issuer elects to give the Trustee directions using Electronic Means and the Trustee in its discretion elects to act upon such directions, the Trustee's understanding of such directions shall be deemed controlling. Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such directions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the Written Certificate of Issuer provided to the Trustee have been sent by such Authorized Officer. Issuer shall be responsible for ensuring that only Authorized Officers transmit such directions to the Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys issued by the Trustee as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such directions notwithstanding such directions conflict or are inconsistent with a subsequent written direction. Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Trustee and that there may be more secure methods of transmitting directions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 9.05. Compensation. Issuer shall pay or cause to be paid to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and also all

reasonable expenses, charges, legal fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Indenture, in accordance with the agreements made from time to time between Issuer and the Fiduciary. Subject to the provisions of Section 9.03, Issuer further agrees, to the extent permitted by applicable law, to indemnify and save each Fiduciary harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to such Fiduciary's negligence or willful misconduct.

Section 9.06. Certain Permitted Acts. Any Fiduciary, individually or otherwise, may become the owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds then Outstanding. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

Section 9.07. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties created by this Indenture by giving not less than 60 days' written notice to Issuer and mailing notice thereof to the Holders of Bonds then Outstanding, specifying the date when such resignation shall take effect, and such resignation shall take effect upon the day specified in such notice unless (a) previously a successor shall have been appointed by Issuer or the Bondholders as provided in Section 9.09, in which event such resignation shall take effect immediately on the appointment of such successor, or (b) a successor shall not have been appointed by Issuer or the Bondholders as provided in Section 9.09 on such date, in which event such resignation shall not take effect until a successor is appointed.

Section 9.08. Removal of the Trustee. The Trustee may be removed with 30 days' prior notice with or without cause by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of Issuer. So long as no Event of Default, or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Trustee may be removed at any time, with or without cause, by delivery of a Written Certificate of Issuer to the Trustee with respect to the foregoing. Notwithstanding the foregoing, any such removal of the Trustee shall not be effective until a successor Trustee has been appointed pursuant to Section 9.09.

Section 9.09. Appointment of Successor Trustee. (a) In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor Trustee may be appointed by Issuer by a duly executed written instrument signed by an Authorized Officer.

(b) If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 60 days after the Trustee shall have given to Issuer written notice as provided in Section 9.07 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or for any other reason whatsoever, the Trustee or the Holder of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under the provisions of this Section 9.09 in succession to the Trustee shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least $100,000,000 if there be such a bank with trust powers or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 9.10. Transfer of Rights and Property to Successor Trustee. Any successor trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor Trustee, and also to Issuer, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the Written Request of Issuer or of the successor Trustee, at the cost and expense of Issuer, execute, acknowledge and deliver such instrument of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property, rights, interests and estates held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by Issuer. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

Section 9.11. Merger or Consolidation. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, *provided* such company shall be a bank with trust powers or trust company organized under the laws of any state of the United States or a national banking association and shall be authorized by law to perform all the duties imposed upon it by this Indenture and shall meet the qualifications set forth in Section 9.09(c), shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

Section 9.12. Adoption of Authentication. In case any of the Bonds contemplated to be issued under this Indenture shall have been authenticated but not delivered, any successor Trustee

may adopt the certificate of authentication of any predecessor Trustee so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the said Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds in the name of the predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is provided, anywhere in said Bonds or in this Indenture, that the certificate of the Trustee shall have.

Section 9.13. Resignation or Removal of Paying Agent and Appointment of Successor. (a) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least [60] days' written notice to Issuer, the Trustee and the other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by an Authorized Officer. Any successor Paying Agent shall be appointed by Issuer and shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, having capital stock, surplus and undivided earnings aggregating at least $50,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, at the reasonable cost and expense of Issuer to the extent such Paying Agent is not acting as the Trustee at the time of such resignation or removal, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

Section 9.14. Trustee's Reliance. The Trustee may conclusively rely, and shall be protected in acting upon any notice, direction, ordinance, resolution, request, consent, order, certificate, report, opinion, bond, statement, facsimilie transmission, electronic mail or other paper or document furnished to the Trustee pursuant to any provision of this Indenture and that is believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties and in conformity with the formal requirements of this Indenture. The Trustee may consult with any consultant, account, or counsel, who may or may not be counsel to Issuer, and the opinion of such consultant, accountant, or counsel shall be full and complete authorization and protection in respect of any action taken or suffered by Trustee under this Indenture in good faith and in accordance therewith. The Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument. Any request, direction, authority or consent given by the Holders of any Bond shall be conclusive and binding upon all Holders of the same Bond and any Bond issued in its place.

Section 9.15. Trustee's Liability. (a) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith, in accordance with the provisions of this Indenture, in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Bonds, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or, except for its negligence or willful misconduct, exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Bonds.

(b) The Trustee shall not be deemed to have knowledge of an Event of Default except for those Events of Default in Sections 8.1(a) and (b) unless a Responsible Officer of the Trustee shall have actual knowledge of such Event of Default. As used herein, "actual knowledge" shall mean the actual fact or statement of knowing without any independent duty to make any investigation with regard thereto.

(c) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All rights, benefits, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

(d) Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of Issuer, and such Written Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Instrument, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in connection with the performance or exercise of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(f) Under no circumstances shall the Trustee in any of its capacities hereunder be liable in its individual capacity for the obligations evidenced by the Bonds or be subject to any personal liability or accountability by reason of the issuance of this Bond or in respect of any undertakings by the Trustee under this Indenture. In accepting the trust hereby created, the Trustee acts solely as Trustee for the holders of the Bonds and not in its individual capacity, and all persons, including without limitation the holders of the Bonds and Issuer, having any claim against the Trustee arising from this Indenture shall look only to the Funds and Accounts held by the Trustee hereunder for payment except as otherwise provided herein.

(g) To the extent permitted by law, Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of any of its duties hereunder, except to the extent that any such loss, damage, claim, liability or expense was due to Trustee's own negligence or willful misconduct.

Section 9.16. Trustee's Agents or Attorneys. The Trustee may execute any of its trusts or powers under this Indenture or perform any of its duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for

any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

ARTICLE X

SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders. Issuer and the Trustee may from time to time, subject to the conditions and restrictions in this Indenture contained, enter into a Supplemental Indenture or Indentures, in form satisfactory to the Trustee, which shall thereafter form a part hereof, without the consent of the Bondholders for any one or more of the following purposes:

(a) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Indenture;

(b) To insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(c) To make any other modification or amendment of this Indenture which the Trustee shall in its sole discretion determine will not have a material adverse effect on the Bondholders or the Interest Rate Swap Counterparty; and in making such a determination, the Trustee shall be entitled to rely conclusively upon an Opinion of Counsel and/or certificates of investment bankers or other financial professionals or consultants;

(d) To add to the covenants and agreements of Issuer in this Indenture, other covenants and agreements to be observed by Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(e) To add to the limitations and restrictions in this Indenture, other limitations and restrictions to be observed by Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) To authorize the issuance of Refunding Bonds;

(g) To authorize, in compliance with all applicable law, Bonds to be issued in the form of coupon Bonds registrable as to principal only and, in connection therewith, specify and determine the matters and things relative to the issuance of such coupon Bonds, including provisions relating to the timing and manner of provision of any notice required to be given hereunder to the Holders of such coupon Bonds, which are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first authentication and delivery of such coupon Bonds;

(h) To provide for the execution of a Commodity Swap in accordance with the provisions hereof;

(i) To provide for a Liquidity Facility and Liquidity Facility Provider in accordance with the provisions hereof;

(j) To confirm, as further assurance, any security interest, pledge or assignment under, and the subjection to any security interest, pledge or assignment created or to be created by, this Indenture of the Revenues or of any other moneys, securities or funds;

(k) To add to the Events of Default in this Indenture additional Events of Default;

(l) To add to this Indenture any provisions relating to the application of interest earnings on any Fund or Account under this Indenture required by law to preserve the exclusion of interest on Bonds issued from gross income for federal income tax purposes;

(m) To evidence the appointment of a successor Trustee; or

(n) If the Bonds affected by such change are rated by a Rating Agency, to make any change upon receipt of a Rating Confirmation with respect to the Bonds so affected.

Each Supplemental Indenture authorized by this Section shall become effective as of the date of its execution and delivery by Issuer and the Trustee or such later date as shall be specified in such Supplemental Indenture.

A Supplemental Indenture will be deemed to not materially adversely affect the Holders of any Bonds that are subject to mandatory tender on or before the effective date of the Supplemental Indenture.

Section 10.02. Supplemental Indentures Effective With Consent of Bondholders. At any time or from time to time, subject to Section 10.03(e) and Section 11.05(b), a Supplemental Indenture may be entered into by Issuer and the Trustee subject to notice to and consent by Bondholders in accordance with and subject to the provisions of Article XI, which Supplemental Indenture, upon compliance with the provisions of said Article XI, shall become fully effective in accordance with its terms as provided in said Article XI.

Section 10.03. General Provisions. (a) This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article X and Article XI. Nothing contained in this Article X or Article XI shall affect or limit the right or obligation of Issuer to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 7.04 or the right or obligation of Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in this Indenture it is provided shall be delivered to said Fiduciary.

(b) Any Supplemental Indenture referred to and permitted or authorized by Section 10.01 may be entered into between Issuer and the Trustee without the consent of any of the Bondholders, but shall become effective only on the conditions, to the extent and at the time provided in said Section. A copy of every Supplemental Indenture shall be accompanied by an Opinion of Counsel stating that such Supplemental Indenture has been duly and lawfully executed in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon Issuer and enforceable in accordance with its terms; *provided*, that such Opinion of Counsel may take exception as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, and judicial discretion and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy.

(c) The Trustee is hereby authorized to enter into any Supplemental Indenture referred to and permitted or authorized by Section 10.01 or Section 10.02 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an Opinion of Counsel that such Supplemental Indenture is authorized or permitted by the provisions of this Indenture.

(d) No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto; *provided, however* this section shall not affect the rights of the Holders or Issuer to remove the Trustee as provided in Section 9.08 herein.

(e) Notwithstanding Section 12.05, no Supplemental Indenture (or other amendment to this Indenture) shall change or modify (i) the order of priority of deposits set forth in Section 5.05(a), (ii) the priority of the application of funds following an Event of Default as set forth in Section 8.03, (iii) the definition of Operating Expenses, (iv) any of the rights or interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) or the Energy Supplier, as purchaser under the Receivables Purchase Provisions, granted herein or in the Commodity Swap, the Interest Rate Swap or the Receivables Purchase Provisions, as the case may be, (v) the provisions of Section 5.04(b) regarding the sale by the Trustee of Put Receivables, or (vi) the provisions of Section 5.08(b) regarding the sale by the Trustee of Call Receivables (A) in each case unless the prior written consent of the Commodity Swap Counterparty has been obtained, and the Commodity Swap Counterparty shall have full right to enforce this provision, and (B) in the case of clause (iv) of this Section 10.03(e), unless the prior written consent of the Interest Rate Swap Counterparty and/or the Energy Supplier, as applicable, has been obtained.

ARTICLE XI

AMENDMENTS

Section 11.01. Mailing. Any provision in this Article XI for the mailing of a notice or other paper to Bondholders shall be fully complied with if it is mailed postage prepaid only (a) to each

registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of Issuer, and (b) to the Trustee.

Section 11.02. Powers of Amendment. Any modification or amendment of this Indenture and of the rights and obligations of Issuer and of the Holders of the Bonds thereunder may be made by a Supplemental Indenture, subject to Section 10.03(e), with the written consent given as provided in Section 11.03(a) of the Holders of not less than a majority in principal amount of Outstanding Bonds, and (b) in case the modification or amendment changes the terms of any Sinking Fund Installment, of the Holders of not less than a majority in principal amount of Outstanding Bonds of the particular maturity entitled to such Sinking Fund Installment; *provided, however,* that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like maturity remain Outstanding (or are subject to mandatory purchase) the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section; and *provided further, however,* that if such modification or amendment would adversely affect the Interest Rate Swap Counterparty, such modification or amendment shall be subject to the prior written consent of the Interest Rate Swap Counterparty. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, the Bonds shall be deemed to be affected by a modification or amendment of this Indenture if the same adversely affects or diminishes the rights of the Holders of Bonds in any material respect. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment Bonds would be materially affected by any modification or amendment of this Indenture and any such determination shall be binding and conclusive on Issuer and all Holders of Bonds. For purposes of this Section, the Holders of any Bonds may include the initial Holders thereof, regardless of whether such Bonds are being held for resale.

Section 11.03. Consent of Bondholders. Issuer and the Trustee may at any time enter into a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 11.02 to take effect when and as provided in this Section 11.03. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by Issuer to Bondholders (but failure to mail such copy and request shall not affect the validity of the Supplemental Indenture when consented to as in this Section 11.03 provided). Such Supplemental Indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of Holders of the percentages of Outstanding Bonds specified in Section 11.02, subject to Section 11.05(b), (b) the written consent of the Interest Rate Swap Counterparty if required by Section 11.02, and (c) an Opinion of Counsel stating that such Supplemental Indenture has been duly and lawfully executed by Issuer in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon Issuer and enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally and may state

that no opinion is being rendered as to the availability of any particular remedy. For purposes of clause (a) of the preceding sentence, the written consent of the Bondholder shall be deemed to have been received if the amendment is expressly referred to in the Supplemental Indenture authorizing such Bonds and in the text of such Bonds and such Bonds recite that such Bondholder shall be deemed to have consented to such amendments by accepting such Bonds. Otherwise, each such consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 12.02. A certificate or certificates executed by the Trustee and filed with the Trustee and Issuer stating that it has examined such proof and that such proof is sufficient in accordance with Section 12.02 shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates of the Trustee. Any such consent shall be irrevocable and shall be binding upon the Holder of the Bonds giving such consent and, anything in Section 12.02 to the contrary notwithstanding, upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice of such consent). At any time after the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Indenture (or have deemed to have consented to such Supplemental Indenture), the Trustee shall make and file with the Trustee and Issuer a written statement that the Holders of such required percentages of Bonds have consented to, such Supplemental Indenture. Such written statements shall be conclusive that such consents have been received. At any time thereafter, notice stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture entered into by Issuer and the Trustee on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in this Section 11.03, may be given to Bondholders by the Trustee by mailing such notice to Bondholders (but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 11.03 provided). A record, consisting of the certificates or statements required or permitted by this Section 11.03 to be made by the Trustee, shall be proof of the matters therein stated.

Section 11.04. Notifications by Unanimous Consent. The terms and provisions of this Indenture and the rights and obligations of Issuer and of the Holders of the Bonds thereunder may be modified or amended in any respect upon the execution of a Supplemental Indenture by the Trustee and Issuer, the consent of the Holders of all of the Bonds then Outstanding (such consent to be given as provided in Section 11.03), and the consent of the Interest Rate Swap Counterparty if required by Section 11.02; *provided, however,* that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary or any of the provisions referenced in Section 10.03(e) without the filing with the Trustee of the written assent thereto of such Fiduciary or the Commodity Swap Counterparty, respectively, in addition to the consent of the Bondholders.

Section 11.05. Exclusion of Bonds. (a) Bonds owned or held by or for the account of Issuer shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI, and Issuer shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article XI. At the time of any consent or other action taken under this Article XI, Issuer shall furnish the Trustee a

certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

(b) Bonds for which a Bondholder has submitted a notice of abstention in response to a request for consent received pursuant to Section 11.03 shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI with respect to any Supplemental Indenture to be entered into by Issuer and the Trustee; *provided*, that, such notice of abstention shall not apply with respect to any proposed amendments of Section 8.01.

Section 11.06. Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as provided in Article X or this Article XI may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by Issuer and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and presentation of its Bond for the purpose at the principal corporate trust office of the Trustee or upon any transfer or exchange of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer or exchange by the Trustee as to any such action. If Issuer or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and Issuer to conform to such action shall be prepared, authenticated and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same maturity then Outstanding, upon surrender of such Bonds.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Defeasance. (a) If Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated in the Bonds and in this Indenture and shall pay or cause to be paid all amounts due or to become due to the Interest Rate Swap Counterparty under the Interest Rate Swap, then the pledge of all covenants, agreements and other obligations of Issuer to the Bondholders, shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds; *provided, however,* that this Indenture shall not be discharged until (i) Issuer shall have paid and satisfied all claims, charges and expenses that constitute Operating Expenses hereunder, (ii) the Trustee shall have received an Opinion of Counsel to the effect that all conditions precedent to the satisfaction and discharge of this Indenture have been fulfilled and (iii) receipt by the Trustee of a Rating Confirmation. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by Issuer to be prepared and filed with Issuer and, upon the request of Issuer, shall execute and deliver to Issuer all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to Issuer all moneys or securities held by them pursuant to this Indenture which are not required for the payment of principal or Redemption Price, if applicable, on Bonds not theretofore surrendered for such payment or redemption. If Issuer shall pay or cause to be paid, or there shall otherwise be paid, to

the Holders of any Outstanding Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of Issuer to the Holders of such Bonds shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds.

(b) Bonds or interest installments for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit by Issuer of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a). In addition, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) upon compliance with the provisions of subsection (c).

(c) Subject to the provisions of subsection (d) of this Section, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, Issuer shall have given to the Trustee irrevocable written instructions accepted in writing by the Trustee to mail as provided in Article IV notice of redemption of such Bonds (other than Bonds which have been purchased by the Trustee at the direction of Issuer or purchased or otherwise acquired by Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of such notice of redemption) on said date, (ii) there shall have been deposited with the Trustee either moneys (including moneys withdrawn and deposited pursuant to Section 5.07(g)) in an amount which shall be sufficient, or Defeasance Securities (including any Defeasance Securities issued or held in book entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or Redemption Price, if applicable, and interest due and to become due on said Bonds (with such interest being calculated at the Maximum Rate with respect to any Bonds with interest rates that are not fixed to their redemption or maturity date, as applicable) on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding 60 days, Issuer shall have given the Trustee in form satisfactory to it irrevocable written instructions to mail, as soon as practicable, a notice to the Holders of such Bonds at their last addresses appearing upon the registry books at the close of business on the last Business Day of the month preceding the month for which notice is mailed that the deposit required by (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section 12.01 and stating such maturity or redemption date upon which moneys are expected, subject to the provisions of subsection (d) of this Section 12.01, to be available for the payment of the principal or Redemption Price, if applicable, on said Bonds (other than Bonds which have been purchased by the Trustee at the direction of Issuer or purchased or otherwise acquired by Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of the notice of redemption referred to in clause (i)). Any notice of redemption mailed pursuant to the preceding sentence with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity shall specify the letter and number

or other distinguishing mark of each such Bond. The Trustee shall, as and to the extent necessary, apply moneys held by it pursuant to this Section 12.01 to the retirement of said Bonds in amounts equal to the unsatisfied balances (determined as provided in Section 5.10(c)) of any Sinking Fund Installments with respect to such Bonds, all in the manner provided in this Indenture. The Trustee shall, if so directed by Issuer (A) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (B) prior to the mailing of the notice of redemption referred to in clause (i) above with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, apply moneys deposited with the Trustee in respect of such Bonds and redeem or sell Defeasance Securities so deposited with the Trustee and apply the proceeds thereof to the purchase of such Bonds and, the Trustee shall immediately thereafter cancel all such Bonds so purchased; *provided, however,* that the moneys and Defeasance Securities remaining on deposit with the Trustee after the purchase and cancellation of such Bonds (or the deemed cancellation thereof) shall be sufficient to pay when due the Principal Installment or Redemption Price, if applicable, and interest due or to become due on all Bonds (calculated as described above), in respect of which such moneys and Defeasance Securities are being held by the Trustee on or prior to the redemption date or maturity date thereof, as the case may be. If, at any time (1) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (2) prior to the mailing of the notice of redemption referred to in clause (i) with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, Issuer shall purchase or otherwise acquire any such Bonds and deliver such Bonds to the Trustee prior to their maturity date or redemption date, as the case may be, the Trustee shall immediately cancel all such Bonds so delivered; such delivery of Bonds to the Trustee shall be accompanied by directions from Issuer to the Trustee as to the manner in which such Bonds are to be applied against the obligation of the Trustee to pay or redeem Bonds deemed paid in accordance with this Section 12.01. The directions given by Issuer to the Trustee referred to in the preceding sentences shall also specify the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to pay Bonds deemed paid in accordance with this Section 12.01 upon their maturity date or dates and the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to redeem Bonds deemed paid in accordance with this Section 12.01 on any date or dates prior to their maturity. In the event that on any date as a result of any purchases, acquisitions and cancellations or deemed cancellations of Bonds as provided in this Section 12.01 the total amount of moneys and Defeasance Securities remaining on deposit with the Trustee under this Section 12.01 is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of the remaining Bonds in order to satisfy clause (ii) of this subsection (c) of Section 12.01, the Trustee shall, if requested by Issuer, pay the amount of such excess to Issuer free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Except as otherwise provided in subsections (c) and (d) of this Section 12.01, neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Bonds; *provided* that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (x) to the extent such cash will not be required

at any time for such purpose, shall be paid over to Issuer as received by the Trustee, free and clear of any trust, lien or pledge securing said Bonds or otherwise existing under this Indenture, and (y) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Qualified Investments maturing at times and in amounts sufficient to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to Issuer, as received by the Trustee, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Notwithstanding anything contained herein to the contrary, Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against Defeasance Securities or the principal and interest received on Defeasance Securities.

(d) Anything in this Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds which remain unclaimed for six years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for six years after the date of deposit of such moneys if deposited with the Fiduciary after the said date when such Bonds became due and payable, shall, at the Written Request of Issuer, be repaid by the Fiduciary to Issuer, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to Issuer for the payment of such Bonds; *provided, however,* that before being required to make any such payment to Issuer the Fiduciary shall, at the expense of Issuer, cause to be published at least twice, at an interval of not less than seven days between publications, in the Authorized Newspaper, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the first publication of such notice, the balance of such moneys then unclaimed will be returned to Issuer.

Section 12.02. Evidence of Signatures of Bondholders and Ownership of Bonds. (a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and, except as otherwise provided in Section 11.03, shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of (1) the execution of any such instrument, or of an 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 Issuer or any Fiduciary in accordance therewith.

Section 12.03. Moneys Held for Particular Bonds. The amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Bonds entitled thereto.

Section 12.04. Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Indenture shall at all times during regular business hours (upon reasonable prior written notice) be subject to the inspection of Issuer, any other Fiduciary, and any Bondholder and their agents and their representatives, any of whom may make copies thereof, subject to such reasonable regulations as such Fiduciary may from time to time determine to be advisable or required by law.

Section 12.05. Parties Interested Herein. Nothing in this Indenture expressed or implied, except for the rights and interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) and the Energy Supplier, as purchaser under the Receivables Purchase Provisions, as described in Section 10.03(e), and the lien on the Commodity Swap Payment Fund granted to the Commodity Swap Counterparty, is intended or shall be construed to confer upon, or to give to, any Person or corporation, other than Issuer, the Fiduciaries, the Holders of the Bonds, and any Depository, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation thereof; and, except as provided in Section 10.03(e), all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of

Issuer shall be for the sole and exclusive benefit of Issuer, the Fiduciaries, the Holders of the Bonds, the Interest Rate Swap Counterparty and any Depository.

Section 12.06. No Recourse on the Bonds. No recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon or on this Indenture against any source other than the Trust Estate as provided in this Indenture, including against any member of the Board or officer of Issuer, the Project Participant or any Person executing the Bonds.

Section 12.07. Publication of Notice; Suspension of Publication. (a) Any publication to be made under the provisions of this Indenture in successive weeks or on successive dates may be made in each instance upon any Business Day of the week and need not be made in the same Authorized Newspaper for any or all of the successive publications but may be made in a different Authorized Newspaper.

(b) If, because of the temporary or permanent suspension of the publication or general circulation of any Authorized Newspaper or for any other reason, it is impossible or impractical to publish any notice pursuant to this Indenture in the manner herein provided, then such publication in lieu thereof as shall be made by Issuer with the written approval of the Trustee shall constitute a sufficient publication of such notice.

Section 12.08. Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Indenture on the part of Issuer or any Fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Indenture.

Section 12.09. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

Section 12.10. Notices. Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Indenture shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid (or sent by Electronic Means, confirmed by mail, as aforesaid), as follows:

If to Issuer:

[California Community Choice Financing Authority]
[_____]
[_____]
Telephone: [____ ___-____]
Attention: [____]
Email: [_____]

With a copy to:
[EBCE]

	With a copy to: [SVCE]
If to the Trustee, Paying Agent, the Bond Registrar, the Custodian or the Calculation Agent for the Index Rate Bonds:	[Trustee] [_____] [_____] Telephone: [____ ___-____] Attention: [____] Email: [_____]
If to the Calculation Agent for Bonds bearing interest at a CPI Index Rate:	Morgan Stanley & Co., LLC 1585 Broadway New York, NY 10036 Telephone: (212) 761-4000 Attention: agystruct@morganstanley.com With a copy to: Keith Cackowsky Morgan Stanley Energy Structuring, L.L.C. 1585 Broadway New York, NY 10036 Telephone: (914) 225-1548 Attention: Keith.Cackowsky@morganstanley.com

or to such other Person or addresses as the respective party hereafter designates in writing to Issuer and the Trustee.

Section 12.11. Notices to Rating Agencies. Issuer shall provide to each Rating Agency rating the Bonds at the time: (a) notice of any amendment to this Indenture, the Energy Purchase Agreement, any Commodity Swap, any Energy Supply Contract, and Debt Service Fund Agreement or any other document relating to the Bonds or Energy Project; and (b) each notice provided to the Municipal Securities Rulemaking Board, through its EMMA system, pursuant to the Continuing Disclosure Undertaking executed by Issuer in connection with the issuance of the Bonds.

Section 12.12. Counterparts. This Indenture may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

[*Signature page follows*]

IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Indenture to be signed in its own name and on its behalf by an Authorized Officer, and as evidence of its acceptance of the trusts hereby created, [Trustee], the duly authorized Trustee, has caused this Indenture to be signed in its name and on its behalf by one of its officers duly authorized and its corporate seal to be hereunto affixed, attested by another of its officers duly authorized, all as of the date first above written.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By:_____

[SEAL]

ATTEST:

_____
[Title]

[TRUSTEE], as Trustee

By:_____
Title: _____

[SEAL]

ATTEST:

_____
Attesting Party

[Signature page to Trust Indenture]

EXHIBIT A

FORM OF BONDS

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("*DTC*"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED
NO. ___

REGISTERED
$_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
[ENERGY PROJECT REVENUE BOND
2021 SERIES [A-1][A-2]]

MATURITY DATE	ISSUE DATE	CUSIP	INTEREST RATE	INTEREST RATE MODE
	_____, 2021			

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

California Community Choice Financing Authority (the "*Issuer*"), acknowledges itself indebted and for value received hereby promises to pay, in the manner and from the source hereinafter provided, to the registered owner identified above, or registered assigns, on the Maturity Date stated above, unless this Bond shall have been called for redemption and payment of the Redemption Price shall have been duly made or provided for, upon presentation and surrender hereof, the principal amount identified above, and to pay, in the manner and from the source hereinafter provided, to the registered owner hereof interest on the balance of said principal amount from time to time remaining unpaid at the rate set forth above, until payment in full of such principal amount.

The following paragraph shall be inserted in the Series 2021A Bonds:

> This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at the rate per annum set forth above, computed on the basis of a 360-day year consisting of 12 thirty-day

months, payable on [_____] and [_____] of each year, commencing [_____], 2021.

The following paragraph shall be inserted for any LIBOR Index Rate Bonds, and the phrase "LIBOR Index Rate" shall be inserted under the caption "Interest Rate" immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a LIBOR Index Rate equal to the sum of (a) the Applicable Spread of [_____] basis points ([____]%) plus (b) the product of (i) the One-Month LIBOR Index as of the day of determination multiplied by (ii) the Applicable Factor of [____]% (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

The following paragraph shall be inserted in the Series 2021A-2 Bonds, and the phrase "SIFMA Index Rate" shall be inserted under the caption "Interest Rate" immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a SIFMA Index Rate equal to the sum of (a) the SIFMA Index as of the day of determination plus (b) the Applicable Spread of [_____] basis points ([____]%) (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

The following paragraph shall be inserted for any CPI Index Rate Bonds, and the phrase "CPI Index Rate" shall be inserted under the caption "Interest Rate" immediately below the title of such Bond:

This Bond bears interest from the Issue Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a CPI Index Rate determined accordance with Section 2.14 of the Indenture (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 360-day year of twelve 30-day calendar months and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

THE ISSUER IS OBLIGATED TO PAY THE PRINCIPAL OF, REDEMPTION PRICE OF, AND INTEREST ON THIS BOND SOLELY FROM THE REVENUES (AS SUCH TERM IS DEFINED IN THE INDENTURE HEREINAFTER REFERRED TO) AND OTHER FUNDS OF THE ISSUER PLEDGED THEREFOR IN ACCORDANCE WITH THE PROVISIONS OF THE INDENTURE. THIS BOND IS NOT A DEBT OF THE ISSUER, OF ANY PUBLIC AGENCY, OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN THEREOF OR ANY PROJECT PARTICIPANT OF THE ISSUER PURSUANT TO AN ENERGY SUPPLY CONTRACT (AS DEFINED HEREIN) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. PURSUANT TO THE INDENTURE, SUFFICIENT REVENUES HAVE BEEN PLEDGED AND WILL BE SET ASIDE INTO SPECIAL FUNDS BY THE ISSUER TO PROVIDE FOR THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND AND ALL BONDS OF THE SERIES OF WHICH IT IS A PART.

THIS BOND SHALL NOT BE A DEBT OF ANY PUBLIC AGENCY OR ANY POLITICAL SUBDIVISION OR OF THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN OF THE STATE, OR OF ANY PROJECT PARTICIPANT, AND NEITHER THE STATE OF CALIFORNIA NOR ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN THEREOF, NOR THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE OR ANY PROJECT PARTICIPANT SHALL BE LIABLE THEREON. THIS BOND SHALL BE PAYABLE FROM THE REVENUES AND SPECIAL FUNDS PROVIDED FOR IN THE INDENTURE AND NOT FROM ANY OTHER FUNDS OR PROPERTIES OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

This Bond and the issue of Bonds of which it is a part are issued in conformity with and after full compliance with the Constitution of the State of California and pursuant to the provisions of the Act as defined in the Indenture and all other laws applicable thereto.

This Bond is a special, limited obligation of Issuer and is one of the [Energy Project Revenue Bonds] of Issuer initially issued in [two] separate series (collectively, the *"Bonds"*) under and by virtue of the Act and pursuant to a Trust Indenture, dated as of [_____] 1, 2021 (the *"Indenture"*), between Issuer and [Trustee], as trustee (the *"Trustee"*), for the purpose of providing funds to pay the Cost of Acquisition of Issuer's Energy Project. The aggregate principal amount of Bonds issued pursuant to the Indenture is limited to $[_____]. This Bond is one of the Series of Bonds designated as "[Energy Project Revenue Bonds, 2021 Series [A-1][A-2]]," dated as of the Issue Date identified above.

All Bonds issued and to be issued under the Indenture are and will be equally and ratably secured by the pledge and covenants made therein, except as otherwise expressly provided or permitted in or pursuant to the Indenture.

Copies of the Indenture are on file at the office of Issuer in San Rafael, California, and at the designated corporate trust office of [Trustee], in [CITY, STATE], and reference to the Indenture and the Act is made for a description of the pledge and covenants securing the Bonds, the nature, manner and extent of enforcement of such pledge and covenants, the terms and conditions upon which the Bonds and certain other Bonds were issued simultaneously thereunder, and a statement of the rights, duties, immunities and obligations of Issuer and of the Trustee. Such pledge and other obligations of Issuer under the Indenture may be discharged at or prior to the

maturity or redemption of the Bonds upon the making of provision for the payment thereof on the terms and conditions set forth in the Indenture.

Except as otherwise provided herein and unless the context clearly indicates otherwise, words and phrases used herein shall have the same meanings as such words and phrases in the Indenture.

Issuer has established a book entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, a Securities Depository (or its nominee) will be the registered owner of this Bond. By acceptance of a confirmation of purchase, delivery or transfer, the Beneficial Owner of this Bond shall be deemed to have agreed to this arrangement. The Securities Depository (or its nominee), as registered owner of this Bond, shall be treated as the owner of it for all purposes.

Issuer will pay the principal, Redemption Price and Purchase Price of, and interest on this Bond solely from the Revenues and other funds and amounts pledged therefor pursuant to the Indenture. Interest will accrue on the unpaid portion of the principal of this Bond from the last date to which interest was paid or duly provided for or, if no interest has been paid or duly provided for, from the date of the original issuance of the Bonds, until the entire principal amount of this Bond is paid or duly provided for, and such interest shall be paid in the manner and on the Interest Payment Dates specified in the Indenture.

The Bonds are subject to acceleration, redemption and purchase prior to maturity upon the circumstances, at the times, in the amounts, upon payment of the amounts, with the notice, upon the other terms and provisions and with the effect set forth in the Indenture.

This Bond may be transferred or exchanged as provided in the Indenture. Issuer and the Trustee may treat and consider the person in whose name this Bond is registered as the Holder and the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal, purchase price or Redemption Price hereof and interest due hereon and for all other purposes whatsoever.

To the extent and in the respects permitted by the Indenture, the Indenture may be modified or amended by action on behalf of Issuer taken in the manner and subject to the conditions and exceptions prescribed in the Indenture.

The Holder or Beneficial Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the pledge or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in, or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of California or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of Bonds, together with all other

indebtedness of Issuer, is within every debt and other limit prescribed by said Constitution and statutes.

This Bond shall not be valid until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Treasurer/Controller, and attested by the manual or facsimile signature of its Secretary, all as of the issue date specified above.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By:_____
Treasurer/Controller

ATTEST:

_____
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION]

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the [Energy Project Revenue Bonds, 2021 Series [A-1][A-2]], of California Community Choice Financing Authority.

Date of registration and authentication: _____, 20[___].

[TRUSTEE], as Trustee

By:_____
Name: _____
Title: _____

Customary abbreviations may be used in the name of a Bondholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/T/M/A (= Uniform Transfers to Minors Act).

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

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.

EXHIBIT B

FORM OF INDEX RATE DETERMINATION CERTIFICATE

Re: California Community Choice Financing Authority [Energy Project Revenue Bonds, 2021 Series A-2] (the *"Bonds"*)

Reference is made to Section [2.09][and][2.14] of the Trust Indenture, dated as of [_____] 1, 2021 (the *"Indenture"*), between the California Community Choice Financing Authority (the *"Issuer"*) and [Trustee], as trustee (the *"Trustee"*), relating to the above captioned Bonds. Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Indenture.

The undersigned Authorized Representative of Issuer hereby notifies the Trustee and the Rating Agencies as follows with respect to the Index Rate Period commencing on the date hereof:

Include the following text separately for each Series of Index Rate Bonds:

(i) the Index Rate shall be the [LIBOR/SIFMA] Index Rate and the Index Rate Period shall be _____;

(ii) if the Index Rate shall be the LIBOR Index Rate, (A) the LIBOR Index for the applicable LIBOR Period shall be the Intercontinental Exchange London interbank offered rate for United States dollar deposits, as reported by Bloomberg (or any successor) as of 11:00 a.m., London time, on _____, the second Business Day preceding the [Initial Issue Date][Index Rate Reset Date], (B) the Applicable Factor, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be ___% of LIBOR, and (C) the LIBOR Period shall be _____.

(iii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

MATURITY DATE	APPLICABLE SPREAD	MATURITY DATE	APPLICABLE SPREAD

(iv) if, during any [SIFMA/LIBOR] Index Rate Period, the [SIFMA/LIBOR] Index Rate is not reported by, or otherwise ceases to be available from, the relevant source, the substitute or replacement Index Rate, as determined by Issuer, for the Index Rate Period shall be the substitute determined in writing by Issuer;

(v) the Index Rate Tender Date shall be _____;

(vi) the Interest Payment Date[s] shall be _____; and

(vii) the Index Rate Reset Date[s] shall be _____.

Include the following text for any Series of CPI Bonds:

(i) the CPI Interest Period shall be _____.

(ii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

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 [(CPIt — CPIt-12) / CPIt-12] + Applicable Spread, where:

CPIt = CPI for the applicable Reference Month;

CPIt-12 = CPI for the twelfth month prior to the applicable Reference Month;

Applicable Spread = [ ]%; and

Reference Month = the 3rd calendar month preceding each CPI Index Rate Reset Date.

(iv) the Mandatory Purchase Date shall be _____;

(v) the Interest Payment Date[s] shall be the first Business Day of each Month, commencing on the first Business Day of [_____], [20__]; and

(vi) CPI Index Rate Reset Date[s] shall be the first Business Day of each calendar month; and

(vii) if, during any CPI Index Rate Period, the CPI is not reported by, or otherwise ceases to be available from, the relevant source, but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate.

IN WITNESS WHEREOF, I have set forth my hand this ____ day of _____.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By _____
Name _____
Title _____

Please sign below to signify your acknowledgement of receipt of this Certificate and, as to the Underwriter or the Remarketing Agreement, as the case may be, your agreement with the terms set forth herein.

ACKNOWLEDGED AND RECEIVED:
[TRUSTEE], as Trustee

By _____
Name _____
Title _____

ACKNOWLEDGED, RECEIVED AND AGREED TO:

_____
as Underwriter

By _____
Name _____
Title _____

EXHIBIT C

[RESERVED]

EXHIBIT D

DIRECTION OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY TO REDEEM [ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

To: [Trustee], as Trustee (the *"Trustee"*)

DIRECTION IS HEREBY GIVEN by the California Community Choice Financing Authority (the *"Issuer"*) to the Trustee for Issuer's [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the *"Bonds"*) issued pursuant to the Trust Indenture, dated as of [CLOSING MONTH] 1, 2021 between Issuer and the Trustee (the *"Indenture"*), to call the Bonds for redemption on _____, 20__ (the *"Redemption Date"*) at a redemption price equal to (a) in the case of the Series 2021A Bonds [FOR REDEMPTION UNDER SECTION 4.03(a): the greater of (i) the Amortized Value of the Bonds, plus accrued interest to the Redemption Date, or (ii) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Bonds to be redeemed from and including the Redemption Date to the stated maturity date of such Bonds, discounted to the Redemption Date on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for the Bonds minus 0.25% per annum] OR [FOR REDEMPTION UNDER SECTION 4.03(b): the Amortized Value of the Bonds as of the first day of the month of redemption, plus accrued interest to the Redemption Date] and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the *"Redemption Price"*).

["*Amortized Value*" means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond's original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Indenture; *provided* that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.]

["*Applicable Tax Exempt Municipal Bond Rate*" for the Bonds of any maturity shall be the "Comparable AAA General Obligations" yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations" yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address:

www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the "Comparable AAA General Obligations" yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semiannual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.]

The quotation agent selected by Issuer is _____. _____ _____ shall calculate the Redemption Price and deliver it to you five Business Days (as defined in the Indenture) prior to the Redemption Date.

Issuer hereby directs you to cause notice of such optional redemption to be given pursuant to the provisions set forth in Section 4.04 of the Indenture to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee for that purpose, as of the Regular Record Date (as defined in the Indenture), such notice to be mailed by first class mail, postage prepaid, at least _____ (____) days prior to the Redemption Date, and such notice to be in substantially the form attached as Exhibit A hereto.

Dated: _____.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By _____
Name _____
Title _____

ACKNOWLEDGED:
[TRUSTEE]

By _____
Name _____
Title _____

EXHIBIT A

NOTICE OF CONDITIONAL OPTIONAL REDEMPTION OF
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
[ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

NOTICE IS HEREBY GIVEN to the holders of the following California Community Choice Financing Authority [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the *"Bonds"*), which were issued on [_____], 2021, that the Bonds listed below have been called for redemption prior to maturity on _____, 20[__] (the *"Redemption Date"*), at a redemption price equal to (a) in the case of the Series 2021A Bonds, [the Amortized Value of the Bonds as of the Redemption Date, plus accrued interest to the Redemption Date][the greater of (i) the Amortized Value of the Bonds, plus accrued interest to the Redemption Date, or (ii) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Bonds to be redeemed from and including the Redemption Date to the stated maturity date of such Bonds, discounted to the Redemption Date on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for the Bonds minus 0.25% per annum], and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the *"Redemption Price"*).

"*Amortized Value*" means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond's original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Trust Indenture dated as of [_____] 1, 2021; *provided* that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.

["*Applicable Tax Exempt Municipal Bond Rate*" for the Bonds of any maturity shall be the "Comparable AAA General Obligations" yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable, as published by Municipal Market Data at least five Business Days and not more than 15 Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations" yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the "Comparable AAA General Obligations" yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily

by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semiannual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.]

CUSIP Number[1]	Maturity Date	Interest Rate	Outstanding Principal Amount	Principal Amount To Be Redeemed	Redemption Date
		%	$	$	

The quotation agent selected by the California Community Choice Financing Authority is _____ _____. [_____ shall calculate the Redemption Price five Business Days (as defined in the Indenture) prior to the Redemption Date].

On the Redemption Date, there shall become due and payable on the Bonds to be redeemed, upon presentation and surrender of such Bonds as set forth below, the above mentioned Redemption Price, together with interest accrued and unpaid on the Bonds to be redeemed to such Redemption Date and, if payment has been made as provided for, then interest on the Bonds to be redeemed shall cease to accrue from and after the Redemption Date.

The redemption of the Bonds is subject to the condition that the Redemption Price will be due and payable on the Redemption Date only if moneys sufficient to accomplish such redemption are held by the Trustee on the scheduled Redemption Date.

1 No representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in this notice and an error in a CUSIP number as printed on such Bonds or as contained in this notice shall not affect the validity of the proceedings for redemption.

On [insert redemption date], the Bonds to be redeemed shall be surrendered for redemption to:

FIRST CLASS/ REGISTERED/CERTIFIED	EXPRESS DELIVERY ONLY	BY HAND ONLY
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]

Any inquiries can be made by calling the Customer Service number [____].

The method of delivery of the Bonds to be redeemed is at the option and risk of the holder, but, if mail is used, registered mail, properly insured, with receipt requested, is recommended.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: [TRUSTEE], as Trustee

Dated: _____, 20[___]

EXHIBIT E

[CONDITIONAL] NOTICE OF EXTRAORDINARY REDEMPTION OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY [ENERGY PROJECT REVENUE BONDS, 2021 SERIES A-[1][2]]

NOTICE IS HEREBY GIVEN to the holders of the following California Community Choice Financing Authority [Energy Project Revenue Bonds, 2021 Series A-[1][2]] (the "*Bonds*"), which were issued on [_____], 2021, that the Bonds listed below have been conditionally called for redemption prior to maturity on _____, 20[___] (the "*Redemption Date*"), at a redemption price equal to (a) in the case of the Series 2021A Bonds, the Amortized Value of the Bonds as of the Redemption Date, plus accrued interest to the Redemption Date, and (b) in the case of the Series 2021A-2 Bonds, 100% of the principal amount thereof, plus accrued and unpaid interest to the Redemption Date (the "*Redemption Price*").

"*Amortized Value*" means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond's original reoffering yield, which, in the case of the Series 2021A Bonds and certain dates, produces the amounts for all of the Series 2021A Bonds set forth in Schedule IV to the Trust Indenture dated as of [_____] 1, 2021; *provided* that in the case of an optional redemption of the Series 2021A Bonds during the three Months preceding the Initial Mandatory Purchase Date, the Amortized Value of the Series 2021A Bonds in any Month shall be the Amortized Value of the Series 2021A Bonds as of the first day of such Month.

CUSIP NUMBER[1]	MATURITY DATE	INTEREST RATE	OUTSTANDING PRINCIPAL AMOUNT	PRINCIPAL AMOUNT TO BE REDEEMED	REDEMPTION DATE
		%	$	$	

On the Redemption Date, there shall become due and payable on the Bonds to be redeemed, upon presentation and surrender of such Bonds as set forth below, the above mentioned Redemption Price, together with interest accrued and unpaid on the Bonds to be redeemed to such Redemption Date and, if payment has been made as provided for, then interest on the Bonds to be redeemed shall cease to accrue from and after the Redemption Date.

[1] No representation is made as to the correctness of the CUSIP number either as printed on the Bonds or as contained in this notice and an error in a CUSIP number as printed on such Bonds or as contained in this notice shall not affect the validity of the proceedings for redemption.

[Note: The following paragraph is to be used only if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, Issuer HAS entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds on such Mandatory Purchase Date.]

[The Redemption Date is also a Mandatory Purchase Date under the Indenture. The redemption of the Bonds is subject to the condition that the Trustee has not received, by noon New York City time on the fifth Business Day preceding the Redemption Date, the Purchase Price of the Bonds required to be purchased on the Redemption Date. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding the Redemption Date, the Trustee shall withdraw this conditional notice of redemption and the Bonds shall be purchased pursuant to Section 4.14 of the Indenture on the Redemption Date rather than redeemed.]

On [insert redemption date], the Bonds to be redeemed shall be surrendered for redemption to:

FIRST CLASS/ REGISTERED/CERTIFIED	EXPRESS DELIVERY ONLY	BY HAND ONLY
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]
[_____]	[_____]	[_____]

Any inquiries can be made by calling the Customer Service number [____].

The method of delivery of the Bonds to be redeemed is at the option and risk of the holder, but, if mail is used, registered mail, properly insured, with receipt requested, is recommended.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: [TRUSTEE], as Trustee

Dated: _____, 20[___]

SCHEDULE I

INITIAL PROJECT PARTICIPANTS

East Bay Community Energy
Silicon Valley Clean Energy

SCHEDULE II

SCHEDULED DEBT SERVICE DEPOSITS

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 [____] and ending with [____], Issuer will determine for each "Primary Delivery Point" as set forth on Exhibit A to the Energy Purchase Agreement, (i) the price under the "Contract Index Price" (as set forth on such Exhibit A), (ii) the difference (which may be positive or negative) between such Contract Index Price and the fixed prices for Energy set forth in the Commodity Swap, and (iii) the product of such difference and the Energy quantity, as applicable, for such Primary Delivery Point as set forth on Exhibit A to the Energy Purchase Agreement.

Issuer will then calculate a net settlement amount for all Primary Delivery Points for such Month due by or to Issuer under the Commodity Swap that aggregates the amounts determined under clause (iii) above.

All payments from Issuer or the Commodity Swap Counterparty will be due on each "Payment Date" under the Commodity Swap (which shall be the twenty-fifth day of the Month following the Month of Energy deliveries or, if such day is not a Business Day under the Commodity Swap, then the next following Business Day).

SCHEDULE IV

AMORTIZED VALUE OF SERIES 2021A BONDS

DATE	AMORTIZED VALUE	DATE	AMORTIZED VALUE

PREPAID ENERGY SALES AGREEMENT

between

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

and

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

Dated as of [____], 2021

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PREPAID ENERGY SALES AGREEMENT

This Prepaid Energy Sales Agreement (hereinafter "Agreement") is made and entered into as of [____], 2021 (the "Execution Date"), by and between Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("Seller"), and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("Buyer").

W I T N E S S E T H:

WHEREAS, Seller desires to sell electricity to Buyer, and Buyer desires to purchase electricity from Seller, upon the terms and conditions hereinafter set forth; and

WHEREAS, concurrently with Buyer's execution of the Power Supply Contracts (as defined below), the Project Participants (as defined below) under such Power Supply Contracts will assign to Seller certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be resold to Buyer hereunder and then resold to the Project Participants under the Power Supply Contracts.

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Buyer and Seller (the "Parties" hereto; each is a "Party") agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

"Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

"Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.

"Assigned Energy" has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

"Assigned Product" means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement

"Assigned RECs" means any RECs to be delivered to MSCG or Seller pursuant to any Assigned Rights and Obligations.

"Assigned Rights and Obligations" means a portion of a Project Participant's rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

"Assignment Agreements" mean the Initial Assignment Agreements and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreements.

"Assignment Letter Agreements" means those certain Letter Agreements, dated as of the date hereof, by and among MSCG, Seller, Buyer and each Project Participant.

"Automatic Non-Default Termination Event" has the meaning specified in Section 17.3(b).

"Available Discount" has the meaning specified in the Re-Pricing Agreement.

"Balancing Authority" has the meaning specified in the CAISO Tariff.

"Base Energy" means Firm (LD) Energy to be delivered to an Energy Delivery Point.

"Billing Statement" has the meaning specified in Section 14.1(b).

"Bond Closing Date" means the first date on which the Bonds are issued pursuant to the Bond Indenture.

"Bond Documents" means this Agreement, the Power Supply Contracts, the Bond Indenture and all other documents, agreements and instruments entered into or delivered by Buyer in connection with any of the foregoing or the transactions thereunder.

"Bond Indenture" means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Buyer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Buyer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

"Bonds" means the bonds issued pursuant to the Bond Indenture.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

"Buyer" has the meaning specified in the preamble.

"Buyer Custodial Agreement" means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among the Swap Counterparty, Buyer, the Trustee and [____], as custodian, as the same may be amended, modified or supplemented from time to time.

"Buyer Default" has the meaning specified in Section 17.2.

"Buyer Swap" means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Buyer and the Swap Counterparty, and (ii) each replacement Buyer Swap entered into pursuant to Section 17.5.

"Buyer's Statement" has the meaning specified in Section 14.1(a).

"CAISO" means California Independent System Operator or its successor.

"CAISO Tariff" means CAISO's FERC-approved tariff, as modified, amended or supplemented from time to time

"California Long-Term Contracting Requirements" means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

"Call Option Notice" has the meaning specified in Exhibit G.

"Claiming Party" has the meaning specified in Section 11.1.

"Claims" means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including 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 prices set forth in the Initial Assignment Agreements.

"Contract Index Price" means the index price specified on Exhibit A-1 with respect to the Hourly Quantity of Energy (which index prices may be Day-Ahead Market Price or Real-Time Market Price).

"Contract Quantity" means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in Exhibit A-2 for such Month and (ii) the Hourly Quantity of Base Energy set forth in Exhibit A-1 for such Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.

"Custodial Agreements" means the Buyer Custodial Agreement and the Seller Custodial Agreement.

"Daily Basis Differential" has the meaning specified in Section 18.11(a)(ii).

"Daily Commodity Reference Price" means (A) the Day-Ahead Market Price, (B) the Day-Ahead Average Price or (C) the Real-Time Market Price.

"Daily Replacement Index" has the meaning specified in Section 18.11(a)(ii).

"Day-Ahead Average Price" means, for any Assigned Energy after the Initial EPS Energy Periods, the weighted average Day-Ahead Market Price for each Month during the applicable EPS Energy Period, with such weighted average calculated in accordance with the weighting set forth in Exhibit A-3; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh.

"Day-Ahead Market Price" means the Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Day-Ahead Market Price hereunder be less than $0.00/MWh.

"Default Rate" means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the "Money Rates" section as the "Prime Rate" for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

"Delivery Hours" means each Hour beginning at [___] PPT on the first day of the Delivery Period and ending at the end of the last Hour in the Delivery Period.

"Delivery Period" has the meaning specified in Exhibit F.

"Delivery Point" means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).

"Early Termination Date" means a date designated pursuant to Section 17.4(a) or Section 17.4(b) upon which the Delivery Period will end and Buyer's and Seller's respective obligations to receive and deliver Energy under this Agreement will terminate.

"Early Termination Payment Date" has the meaning specified in Section 17.4(d).

"EBCE" means East Bay Community Energy Authority, a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

"Energy Delivery Point" has the meaning specified in Exhibit A-1.

"Energy Project" has the meaning specified in the Bond Indenture.

"EPS" means California's Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

"EPS Compliant Energy" means Energy that a Project Participant can contract for and purchase in compliance with EPS requirements that are applicable to such Project Participant.

"EPS Energy Period" means the Initial EPS Energy Periods and any subsequent EPS Energy Periods established by future assignments of power purchase agreements consistent with the Assignment Letter Agreements.

"Execution Date" has the meaning specified in the preamble.

["Failed Remarketing" has the meaning specified in the Bond Indenture.]

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Firm (LD)" means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article IV.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell any Energy purchased

hereunder; (iii) the loss or failure of Seller's supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Seller's ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party (or an upstream supplier with respect to Seller or a Project Participant with respect to Buyer) has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Energy Delivery Point and (b) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; *provided*, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of Seller hereunder; and (II) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Seller until the earlier of (A) the commencement of an "Assignment Period" under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

"Government Agency" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, or similar action by any Government Agency relating to the execution, delivery or performance of this Agreement as any of the foregoing are in effect as of the Execution Date.

"Hour" means each 60-minute period commencing at [___] PPT on the first day of the Delivery Period. The term "Hourly" shall be construed accordingly.

"Hourly Quantity" means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

"Initial Assignment Agreements" mean (i) that certain Partial Assignment Agreement, dated as of the date hereof, by and among EBCE and [MSCG/[Seller][1] and [____], and (ii) that certain Partial Assignment Agreement, dated as of the date hereof, by and among SVCE and [MSCG/[Seller] and [____]. **[NOTE: This definition and others relating to the**

[1] NTD: MSES will be party to an assignment agreement if MSCG is the PPA Supplier, but MSCG will be party to an assignment agreement to the extent a PPA Supplier is an unrelated third party.

initial PPA assignments will be updated as appropriate if a CCA makes multiple PPA assignments at the outset.]

"Initial EPS Energy Periods" means the ["EPS Energy Period" as defined in each of the Initial Assignment Agreements].

"Initial PPA Suppliers" mean (i) [_____], a [_____] for EBCE and (ii) [_____], a [_____] for SVCE.

["Interest Rate Period" has the meaning specified in the Bond Indenture], provided that if the Bonds are outstanding in two or more series with separate, concurrent and co-terminus Interest Rate Periods, "Interest Rate Period" shall mean all such Interest Rate Periods collectively.

["Interest Rate Swap" has the meaning specified in the Bond Indenture.]

"Law" means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

"Long-Term PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

["Mandatory Purchase Date" has the meaning specified in the Bond Indenture.]

"Minimum Discount" has the meaning specified in the Power Supply Contracts.

"Month" means a calendar month. The term "Monthly" shall be construed accordingly.

"Monthly Quantity" means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

"Morgan Stanley" means Morgan Stanley, a Delaware corporation.

"Morgan Stanley Guarantee" means a guarantee of Morgan Stanley of Seller's payment obligations under this Agreement in the form attached hereto as Exhibit E.

"MSCG" means Morgan Stanley Capital Group Inc., a Delaware corporation.

"MWh" means megawatt-hour.

"Optional Non-Default Termination Event" has the meaning specified in Section 17.3(a).

"Party" has the meaning specified in the recitals.

"PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

"Person" means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

"Portfolio Content Category 1" means any Renewable Energy Credit associated with the generation of electricity from an "Eligible Renewable Energy Resource" consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

["Power Supply Contract" has the meaning specified in the Bond Indenture.]

"PPA Supplier" means the Initial PPA Suppliers and any subsequent supplier who enters into an Assignment Agreement consistent with the Assignment Letter Agreements.

"PPT" means Pacific Daylight Time when such time is applicable and otherwise means Pacific Standard Time.

"Prepayment" means the amount specified in Exhibit F.

"Prepayment Outside Date" means the date specified in Exhibit F.

"Project Participant" has the meaning specified in the Bond Indenture.

"PSC Remarketing Election" means, with respect to any Power Supply Contract, that the relevant Project Participant delivered a [Remarketing Election Notice (as defined thereunder)] for any Reset Period.

"Put Option Notice" has the meaning specified in Exhibit G.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Buyer and Seller.

"Real-Time Market Price" means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Real-Time Market Price hereunder be less than $0.00/MWh.

"Remarketing Non-Default Termination Event" has the meaning specified in Exhibit C.

"Remarketing Notice" has the meaning specified in Exhibit C.

"Renewable Energy Credit" or "REC" has the meaning specified for "Renewable Energy Credit" in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"Repurchase Offer" has the meaning specified in Exhibit G.

"Reset Period" means each ["Reset Period" under the Re-Pricing Agreement].

"Schedule", "Scheduled" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"Seller" has the meaning specified in the preamble.

"Seller Custodial Agreement" means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among the Swap Counterparty, Seller, the Trustee and [____], as custodian, as the same may be amended, modified or supplemented from time to time.

"Seller Default" has the meaning specified in Section 17.1.

"Seller Specified Termination" has the meaning specified in Section 17.5.

"Seller Swap" means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Seller and the Swap Counterparty, and (ii) each replacement Seller Swap entered into pursuant to Section 17.5.

"Specified Discount" means the amount specified in Exhibit F.

"Specified Fixed Price" means the amount specified in Exhibit F.

"Specified Investment Agreement" means a guaranteed investment contract between the Trustee and a provider concerning the investment of funds in the [Debt Service Account] (as defined in the Bond Indenture).

"SVCE" means Silicon Valley Clean Energy Authority, a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code.

"Swap Counterparty" means [____], a [____], and any other Person that becomes counterparty to Buyer under a Buyer Swap or to Seller under a Seller Swap, in each case pursuant to Section 17.5.

"Swap Replacement Period" has the meaning specified in Section 17.5(a).

"Terminating Party" means any Party that has the right to terminate this Agreement pursuant to Article XVII.

"Termination Payment" means, with respect to any Early Termination Payment Date, the amount specified on Exhibit D for the calendar month in which such Early Termination Payment Date occurs (as adjusted by any applicable Termination Payment Adjustment Amount) without any set-off or netting of amounts then due from Buyer.

"Termination Payment Adjustment Amount" means, with respect to any Early Termination Payment Date, the amount specified on Exhibit D-1 for the calendar month in which such Early Termination Payment Date occurs. For the avoidance of doubt, the Termination Payment Adjustment Amount for the period commencing on the Execution Date is zero (0).

"Termination Payment Adjustment Schedule" means the schedule of Termination Payment Adjustment Amounts set forth in Exhibit D-1, as such exhibit may be populated and amended from time to time in accordance with Section 17.8.

"Transaction Documents" has the meaning specified in Article XIII.

"Transmission Provider(s)" means any entity or entities transmitting or transporting Energy on behalf of Seller or Buyer to or from an Energy Delivery Point.

"Trustee" means [____], and its successors as Trustee under the Bond Indenture.

"WREGIS" means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to "Articles," "Sections," "Schedules" and "Exhibits" shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

ARTICLE II.
EXECUTION DATE AND DELIVERY PERIOD

Section 2.1 Execution Date; Delivery Period. This Agreement shall become effective upon the Execution Date and, unless this Agreement is terminated early pursuant to Section 2.2, all of Seller's and Buyer's obligations under this Agreement shall be deemed to have been incurred upon the Execution Date. Unless this Agreement is terminated pursuant to Section

2.2, then, upon receipt of the Prepayment, the delivery of Energy under this Agreement shall commence and continue for the Delivery Period, unless an Early Termination Date occurs.

Section 2.2 Termination by Seller Prior to Prepayment. Seller shall have no obligation to perform under this Agreement unless and until it has received the Prepayment from Buyer pursuant to Section 3.2. In the event Seller has not received the Prepayment prior to noon local time in New York, New York on the Prepayment Outside Date, Seller shall have the right, until such Prepayment has been paid, to terminate this Agreement without any further obligation or liability of either Party; *provided* that, for the avoidance of doubt, in the event Seller so terminates, such termination shall be effective upon the Prepayment Outside Date regardless of whether Buyer tenders the Prepayment after Seller's notice of termination but prior to the Prepayment Outside Date. For the avoidance of doubt, no Termination Payment shall be payable by Seller under any circumstances if this Agreement terminates pursuant to this Section 2.2.

ARTICLE III.
SALE AND PURCHASE

Section 3.1 Sale and Purchase of Energy. Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to take or cause to be taken from Seller, in each case, on a Firm (LD) basis, the Contract Quantity pursuant to the terms and conditions set forth in this Agreement. [Energy delivered to Buyer under this Agreement shall be re-delivered to the Project Participants on a fixed price basis during the Initial EPS Energy Periods and on a floating price basis thereafter.][2]

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

[2] HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.

methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Buyer and the [Calculation Agent] (as defined therein) determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (B) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

ARTICLE IV.
FAILURE TO DELIVER OR TAKE ENERGY

Section 4.1 Assigned Product. Notwithstanding anything herein to the contrary, neither Seller nor Buyer shall have any liability or other obligation to one another under this Agreement for any failure to Schedule, take, or deliver Assigned Product other than as set forth in (a) Section 5(a) of Exhibit C for any failure to Schedule, take or deliver not due to Force Majeure and (b) Section 4.2 regarding a failure to Schedule, take or deliver due to Force Majeure.

Section 4.2 Failure to Deliver or Take Due to Force Majeure. If with respect to all or any portion of the Contract Quantity (including any Base Energy or Assigned Energy):

(a) Buyer fails to take or Seller fails to deliver all or any portion of the Contract Quantity at any Delivery Point pursuant to the terms of this Agreement; and

(b) such failure is due to Force Majeure claimed by either Party,

then Seller shall pay to Buyer the result determined by the following formula with respect to each such Delivery Point:

P = Q x 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) The Contract Index Price applicable to such Delivery Hour and Energy Delivery Point for Assigned Energy or (ii) the Contract Fixed Price during the Initial EPS Energy Periods and thereafter the Day-Ahead Average Price for Assigned Energy.

ARTICLE V.
TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy.

(a) Assigned Product. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

(b) Updates to Exhibits. Buyer and Seller may, upon mutual agreement, update Exhibit A-1 to modify the Delivery Points thereunder, provided that the Parties shall promptly notify any Swap Counterparty of any such updates and furthermore shall update the corresponding exhibits to any Buyer Swap and any Seller Swap in accordance with the terms thereof. Furthermore, following the Initial EPS Energy Periods and thereafter in connection with the establishment, expiration or termination of any subsequent EPS Energy Period, the Parties shall update (i) the exhibits 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 Deliveries within CAISO or Another Balancing Authority. The Parties acknowledge that Energy delivered by Seller at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Balancing Authority shall constitute delivery of such Energy to Buyer, provided that any Assigned Products associated with the Energy are also delivered to Buyer hereunder.

ARTICLE VI.
PARTIAL ASSIGNMENTS OF PPAS

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

Section 6.2 Updates to Exhibits A-1 and A-2.

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities of Base Energy and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities of

Assigned Energy thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect (i) appropriate decreases in the Hourly Quantities of Base Energy and increases in the Monthly Quantities of Assigned Energy and (ii) any other changes in connection therewith.

ARTICLE VII.
ENERGY REMARKETING

If (a) a Project Participant is in default under its Power Supply Contract or does not require or is unable to receive all or any portion of the Energy purchased by Buyer under this Agreement as a result of (i) a Project Participant's decreased Energy requirements, (ii) decreased demand by a Project Participant's retail customers and its request that such Energy be remarketed or (iii) EPS Compliant Energy not being available for delivery hereunder; or (b) a quantity of Assigned Energy less than the Monthly Quantity is delivered hereunder in any Month for any reason, then Buyer shall request (and pursuant to Exhibit C may be deemed to request) remarketing services from Seller pursuant to the provisions of Exhibit C.

ARTICLE VIII.
REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) it is duly organized and validly existing under the Laws of the state in which it is organized;

(b) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(c) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(d) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(e) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such

enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(f) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(g) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Buyer, the lien of the Bond Indenture;

(h) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(i) it enters this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Additional Representations and Warranties of Buyer. As a material inducement to entering into this Agreement, Buyer hereby represents and warrants to Seller as of the Execution Date as follows:

(a) Buyer is entering into this Agreement for the purpose of acquiring Energy for sale to its Project Participants pursuant to the Power Supply Contracts;

(b) any amounts payable by Buyer under this Agreement shall (i) other than the Prepayment, be payable as an item of [Operating Expense] under (and as defined in) the Bond Indenture, and (ii) not constitute an indebtedness or liability of Buyer within the meaning of any constitutional or statutory limitation or restriction applicable to Buyer;

(c) Buyer will promptly alert Seller of any notice received by Buyer alleging a breach under the Bond Indenture or of any covenant of Buyer in the agreements entered into by Buyer in connection with the Energy Project;

(d) Buyer shall not (i) enter into any Bond Documents (excluding any contracts applicable to Energy being resold by Buyer or a Project Participant (or a related joint powers authority selling Energy to a Project Participant)), (ii) consent to, waive or agree to or

permit any material amendment to or rescission of any such Bond Documents or (iii) consent to, waive or agree to permit any amendment (whether or not material) to or rescission of the Bond Indenture, in each case, without the prior written consent of Seller;

(e) Buyer shall collect and forthwith cause to be deposited in the relevant funds pursuant to the Bond Indenture all amounts payable to it pursuant to the Power Supply Contracts. Buyer shall enforce the provisions of the Power Supply Contracts, as well as any other contract or contracts entered into relating to the Energy Project, and duly perform its covenants and agreements thereunder. Buyer shall not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with any Power Supply Contract which will impair the ability of Buyer to pay all of its debts and obligations as they come due; provided that this provision shall not prevent Buyer from otherwise taking any action under or in connection with the Power Supply Contracts which is expressly permitted pursuant to the provisions thereof. A copy of each Power Supply Contract and any amendment thereto certified by an authorized officer of Buyer shall be provided to Seller. Buyer shall not enter into any new Power Supply Contracts following the Bond Closing Date without the prior written consent of Seller;

(f) Buyer shall keep or cause to be kept with respect to the Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of the Bond Indenture, in which complete and correct entries shall be made of its transactions relating to the Energy Project, the amount of revenues and the application thereof and each fund and account established under the Bond Indenture and relating to its costs and charges under the Power Supply Contracts and any other contracts for the sale or purchase of Energy, and which, together with all contracts and all other books and papers of Buyer relating to the Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of Seller;

(g) Buyer shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of Buyer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of Buyer when the same shall become due, and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which Buyer shall in good faith contest by proper legal proceedings if Buyer shall in all such cases have set aside on its books reserves deemed adequate by Buyer with respect thereto;

(h) Buyer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to maintain its existence; and

(i) Buyer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to, or reorganize, reincorporate or reconstitute into or as, another entity unless (i) prior to such event, Buyer receives confirmation from Seller that such event does not trigger a termination event under this Agreement or the Buyer Swap and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of Buyer under this Agreement and the Buyer Swap.

Section 8.3 Warranty of Title. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY SELLER IN THIS ARTICLE VIII, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE IX.
TAXES

Seller shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Points, and (ii) indemnify Buyer and its Affiliates for any such taxes paid by Buyer or its Affiliates. Buyer shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Points, and (ii) indemnify Seller and its Affiliates for any such taxes paid by Seller or its Affiliates.

ARTICLE X.
DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection

with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Dispute Resolution.

(a) Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "Dispute") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b) Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Party (the "Responding Party") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the "Negotiation Period"), then either Party may provide to the other Party written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(f) Expenses. Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

ARTICLE XI.
FORCE MAJEURE

Section 11.1 Applicability of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 Settlement of Labor Disputes. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

ARTICLE XII.
GOVERNMENTAL RULES AND REGULATIONS

Section 12.1 Compliance with Laws. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided*, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this

Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII.
ASSIGNMENT

Neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however, that:

(a) pursuant to the Bond Indenture, Buyer may, without the consent of Seller, transfer, sell, pledge, encumber or assign this Agreement to the Trustee in connection with any financing or other financial arrangements; provided that Buyer shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Buyer also assigns the Buyer Swap (and the Buyer Custodial Agreement) to the same assignee;

(b) With the prior written consent of Buyer, not to be unreasonably withheld, Seller may assign this Agreement to an Affiliate of Seller, provided that the Morgan Stanley Guarantee continues to apply to the obligations of such assignee hereunder or the assignee provides to Buyer a parent guarantee and a [Rating Confirmation] (as defined in the Bond Indenture), which assignment shall constitute a novation; provided that, Seller shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Seller also assigns the Seller Swap (and the Seller Custodial Agreement) to the same assignee; and

(c) if either (A) Seller notifies Buyer that the Morgan Stanley Guarantee will be terminated as of the end of any Interest Rate Period; (B) Seller is unable to provide, under the Re-Pricing Agreement, an estimated [Available Discount] (as defined in the Re-Pricing Agreement) that is equal to or greater than the Minimum Discount under the Power Supply Contracts; (C) the circumstances set forth in [Section 5(c)(iii)] of the Re-Pricing Agreement regarding replacement of Seller with an Alternative Supplier (as defined in the Re-Pricing Agreement) apply; or (D) both (1) Seller has agreed under the Re-Pricing Agreement to provide an Available Discount equal to or greater than the Minimum Discount but for a Reset Period shorter than the entire remaining term to maturity of this Agreement and (2) Buyer has identified a potential assignee that has agreed to provide an Available Discount equal to or greater than the Minimum Discount for a Reset Period equal to the entire remaining term to maturity of this Agreement, then, at the request of Buyer, Seller will reasonably cooperate with Buyer to cause Seller's (or Seller's Affiliate's, if applicable) right, title and interest in this Agreement, the Re-Pricing Agreement, the Seller Swap, the Seller Custodial Agreement, the Interest Rate Swap and any Specified Investment Agreement with a term that extends past the then-current Interest Rate Period to which Seller or any Affiliate is a party and all agreements related to any of the foregoing (the "Transaction Documents") to be novated to a replacement seller; provided that (x) a [Rating Confirmation] (as defined in the Bond Indenture) is obtained for any Bonds required to be redeemed on the first Mandatory Purchase Date following the effective date of such novation, (y) the Swap Counterparty shall have provided its prior written consent to such assignment in accordance with the terms of the Seller Swap, and (z) after giving effect to such novation, neither Seller nor Morgan Stanley will have any obligations (contingent or otherwise, including any obligation to make or repeat any representations or warranties other than basic representations on authority and the right to transfer its rights, title and interests under this Agreement without encumbrances) or be required to make any payment under any Transaction

Document, the Morgan Stanley Guarantee or otherwise in connection with or following such novation other than any obligations that would have existed or payments that would have been required (or guaranteed) had this Agreement terminated as of the end of the last Reset Period that commenced prior to such novation.

ARTICLE XIV.
PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Buyer shall deliver to Seller a statement (a "Buyer's Statement") listing any other amounts due to Buyer in connection with this Agreement with respect to the prior Month(s).

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Seller shall deliver a statement (a "Billing Statement") to Buyer indicating (i) the total amount due to Buyer, if any, under Article IV, Article V, Article VII and Exhibit C with respect to the prior Month(s), (ii) any amounts due to Seller in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Buyer or Seller. If the actual quantity delivered is not known by the Billing Date, Seller may provisionally prepare a Billing Statement based on Seller's best available knowledge of the quantity of Energy delivered, which shall not exceed the sum of the Contract Quantity of all Delivery Hours in such Month plus any make-up quantities delivered during such Month. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Buyer at the Default Rate) will then be adjusted on the following Month's Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Buyer, then Buyer shall remit such amount to Seller by wire transfer (pursuant to Seller's instructions), in immediately available funds, on or before the later of (i) the 25th day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10th day following Buyer's receipt of Seller's Billing Statement, or if either such day is not a Business Day, the following Business Day. If the Billing Statement indicates an amount due from Seller, then Seller shall remit such amount to Buyer by wire transfer (pursuant to Buyer's instructions), in immediately available funds, on or before the later of (i) the 22nd day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10th day following Seller's receipt of Buyer's Statement, or if either such day is not a Business Day, the preceding Business Day.

(b) If Buyer fails to issue a Buyer's Statement with respect to any Month, Seller shall not be required to estimate any amounts due to Buyer for such Month, *provided* that Buyer may include any such amount on subsequent Buyer's Statements issued within the next sixty

(60) days. The sixty (60)-day deadline in this subsection (b) replaces the two (2)-year deadline in Section 14.5 with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts. If Seller disputes any amounts included in the Buyer's Statement, Seller shall (a) (except in the case of manifest error) nonetheless calculate the Billing Statement based on the amounts included in Buyer's Statement and (b) pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Seller may have; *provided*, however, that Seller shall have the right, after payment, to dispute any amounts included in a Buyer's Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5(b). If Buyer disputes any amounts included in the Billing Statement, Buyer may withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

Section 14.4 Late Payment. If a Party owing a net payment under Section 14.2 fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Buyer's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Buyer's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within 30 days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on incorrect Buyer's Statements or Billing Statements shall bear interest at the Default Rate from the date such payment was made. Buyer shall cause each Project Participant to comply with the provisions of Section 14.5(a) to the extent necessary to allow Seller to verify any amounts due under this Agreement.

Section 14.6 Netting. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest),

arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, Seller shall not be entitled to net (i) any amounts that are in dispute or (ii) any payments due to Seller against (A) the Termination Payment if it becomes due, or (B) any payments due from Seller pursuant to Article IV, Article V or Exhibit C.

ARTICLE XV.
RECEIVABLES PURCHASES

In accordance with the provisions of Exhibit G, (i) Buyer shall put and Seller shall purchase certain [Receivables] (as defined in Exhibit G) from Buyer relating to payment defaults by the [Specified Project Participants] (as defined in Exhibit G), and (ii) Buyer shall offer and Seller shall have the option to purchase certain Receivables relating to payment defaults by the Project Participants.

ARTICLE XVI.
NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

ARTICLE XVII.
DEFAULT; REMEDIES; TERMINATION

Section 17.1 Seller Default. Each of the following events shall constitute a "Seller Default" under this Agreement:

(a) Seller fails to pay when due any amounts owed to Buyer pursuant to this Agreement and such failure continues for two Business Days after receipt by Seller of notice thereof, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;

(b) Seller: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is

presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Seller in this Agreement proves to have been incorrect in any material respect when made.

Section 17.2 Buyer Default. Each of the following events shall constitute a "Buyer Default" under this Agreement:

(a) Buyer fails to pay when due any amounts owed to Seller pursuant to this Agreement and such failure continues for five Business Days after receipt by Buyer of notice thereof;

(b) Buyer (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in

clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Buyer in this Agreement proves to have been incorrect in any material respect when made.

Section 17.3 Non-Default Termination Events.

(a) Each of the following events shall constitute an "Optional Non-Default Termination Event" under this Agreement:

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 of Interest Rate Swap by Buyer	Buyer designates an [Early Termination Date] (as defined in the Interest Rate Swap) pursuant to the terms of such Interest Rate Swap based on an Event of Default (as defined in such Interest Rate Swap) where Seller is the Defaulting Party.	Buyer
Termination of Interest Rate Swap by Buyer	Buyer designates an [Early Termination Date] (as defined in the Interest Rate Swap) pursuant to such Interest Rate Swap for any reason other than that specified in the immediately preceding Optional Non-Default Termination Event.	Buyer
PSC Remarketing Election	If all of the Project Participants make PSC Remarketing Elections for any Reset Period.	Seller
Termination of Power Supply Contracts	If all of the Power Supply Contracts have been terminated or are otherwise no longer in effect.	Seller

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

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 Section 17.2 or (ii) an Optional Non-Default Termination Event under Section 17.3(a) where Seller is the Terminating Party and (B) except in the case of a Seller Specified Termination (as defined in Section 17.5(a) hereof), either such Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period.
Termination of a Seller Swap for any Other Reason	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 Article XIII 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

Termination Related to:	Automatic Non-Default Termination Event:
	consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding.
Remarketing Non-Default Termination Event	The occurrence of a Remarketing Non-Default Termination Event if, by the 90th day after such event, neither (i) Buyer and Seller have taken the actions described in Section 18.3(b), nor (ii) Buyer has otherwise received an [Opinion of Bond Counsel] (as defined in the Bond Indenture) that such event has not affected the tax-exempt status of the Bonds.

Section 17.4 Remedies and Termination.

(a) Default and Optional Non-Default Termination. If at any time a Seller Default or a Buyer Default has occurred and is continuing or an Optional Non-Default Termination Event has occurred and is continuing, then the Terminating Party, by notice to the other Party specifying the relevant Seller Default, Buyer Default or Optional Non-Default Termination Event, may designate a day not earlier than the day such notice is deemed given under Article XVI as the Early Termination Date; *provided*, however, that:

(i) an Early Termination Date shall occur as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence of a Seller Default specified in Section 17.1(b)(iv) or, to the extent analogous thereto, Section 17.1(b)(viii); and

(ii) with respect to an Optional Non-Default Termination Event related to the Buyer Swap, the Terminating Party may, at any time after the commencement of the Swap Replacement Period, conditionally designate an Early Termination Date, with such designation being conditioned upon (A) the termination and failure to replace either the Seller Swap or the Buyer Swap and (B) the Early Termination Date occurring no earlier than the end of such Swap Replacement Period.

(b) Automatic Non-Default Termination. The Early Termination Date shall occur automatically upon the occurrence of any Automatic Non-Default Termination Event; *provided*, however, in the case of an Automatic Non-Default Termination Event resulting from a termination of the Morgan Stanley Guarantee, the Early Termination Date will occur as of the end of the last day in the then-current Reset Period.

(c) Effect of Early Termination. As of the Early Termination Date, (i) the Delivery Period shall end, (ii) the obligation of Seller to make any further deliveries of Energy to Buyer under this Agreement shall terminate, and (iii) the obligation of Buyer to receive deliveries of Energy from Seller under this Agreement will terminate.

(d) Early Termination Payment Date. (i) In the case of a Failed Remarketing, the last Business Day of the then-current Interest Rate Period, and (ii) in each other case, on the

last Business Day of the first Month that commences after the Early Termination Date (the "Early Termination Payment Date"), Seller shall pay the Termination Payment to the Trustee pursuant to payment instructions issued by Buyer or, in the absence of such instructions, by wire transfer. Such amounts shall be paid together with interest thereon (before as well as after judgment) from (and including) the Early Termination Payment Date to (but excluding) the date such amount is paid, at the Default Rate. The Parties acknowledge that it is impractical and difficult to assess actual damages as a result of a termination of this Agreement, and the Parties therefore agree that the payment of the Termination Payment is a fair and reasonable pre-estimate of the actual damages that would be incurred by Buyer as a result of termination of this Agreement for any reason and is not a penalty. The obligation of Seller to pay the Termination Payment on the Early Termination Payment Date is unconditional, irrespective of the validity or enforceability of this Agreement or any other agreement contemplated hereby, any waiver or consent by Buyer or any other circumstances that might otherwise constitute a legal or equitable discharge of Seller or a defense of Seller to pay the Termination Payment. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller's obligation to pay the Termination Payment on the Early Termination Payment Date.

(e) Exclusive Termination Rights. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII and in Section 2.2. Except with respect to amounts due for periods prior to termination, the payment of the Termination Payment shall be the sole and exclusive remedy for each Party upon the termination of the Delivery Period and this Agreement for any reason, including as a result of rejection of this Agreement by either Party in any bankruptcy proceedings.

Section 17.5 Replacement of Swaps.

(a) In the event that (i) any Buyer Swap or any Seller Swap terminates, (ii) any notice of termination is delivered by any party to a Buyer Swap or a Seller Swap, or (iii) any Buyer Swap or Seller Swap is otherwise reasonably anticipated to become subject to immediate termination, in each case for any reason other than a Seller Specified Termination or insolvency of either Buyer or Seller, then each Party whose swap is affected shall notify the other Party and the Parties shall cooperate in good faith for a period of 120 days (commencing no later than the date on which any notice of termination (or anticipated termination) is delivered by any party to a Buyer Swap or a Seller Swap) (such period, the "Swap Replacement Period") to (x) cause the same Swap Counterparty whose Buyer Swap or Seller Swap has been terminated (or is anticipated to terminate) to terminate its unaffected Seller Swap or Buyer Swap, as applicable, and (y) locate replacement agreements with an alternate Swap Counterparty, to be mutually agreed upon by Buyer and Seller, to replace both the affected swap and the unaffected swap; provided, however, that neither Party shall be required to breach any obligation under the unaffected swap or to expend any amounts to cause the unaffected swap to be replaced or to cause an alternate counterparty to replace both swaps. Neither Party shall terminate this Agreement as a result of the termination of any Seller Swap or any Buyer Swap without first complying with this Section 17.5.

As used in this Section 17.5, the term "Seller Specified Termination" means a termination or potential termination of the Seller Swap due to (i) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller pursuant to [Section 5(a)(i) or 5(a)(iii)] of the Seller Swap, in either case other than where (A) any such failure to pay or transfer was caused

solely by error or omission of an administrative or operational nature; (B) funds were available to enable Seller to make such payment or transfer when due; and (C) such payment or transfer is made within two (2) Business Days of Seller's receipt of written notice of its failure to pay or transfer, or (ii) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller under [Section 5(a)(viii)] of the Seller Swap.

(b) In the event of a termination (or anticipated termination) of the Seller Swap, if Seller (i) presents to Buyer a proposed alternate Swap Counterparty, (ii) requests in writing that Buyer enter into a replacement swap with such alternate Swap Counterparty, and (iii) agrees to pay Buyer's reasonable expenses in connection therewith, Buyer shall (y) enter into a master agreement with such alternate Swap Counterparty and (z) either (A) terminate the Buyer Swap when permitted thereby and enter into a replacement transaction under such new master agreement to the same effect as the terminated Buyer Swap or (B) cause such Buyer Swap to be novated to such replacement Swap Counterparty, *provided* that, in each instance, such replacement Swap Counterparty, replacement master agreement and replacement transaction meet the requirements specified for such under the Bond Indenture. Buyer shall not replace a Buyer Swap without Seller's consent.

(c) Each of Buyer and Seller agree that it will not enter into a replacement Buyer Swap or Seller Swap, as applicable, unless the other Party is replacing its Buyer Swap or Seller Swap, as applicable, with the same replacement Swap Counterparty.

(d) In the event that the Seller Swap terminates or is no longer in effect and the [Prepaid Seller Payments Period] (as defined in the Seller Custodial Agreement) is in effect, then, during such Prepaid Seller Payments Period, Seller shall comply with the terms of the Seller Custodial Agreement and make all payments as and when required under [Section 3(e)] of the Seller Custodial Agreement. In the event that the Buyer Swap terminates or is no longer in effect and the [Issuer Payments Period] (as defined in the Buyer Custodial Agreement) is in effect, then, during such Issuer Payments Period, Buyer shall comply with the terms of the Buyer Custodial Agreement and make all payments as and when required under [Section 3(e)] of the Buyer Custodial Agreement. The Parties agree that during any [Prepaid Seller Payments Period] (as defined in the Seller Custodial Agreement) and during any [Issuer Payments Period] (as defined in the Buyer Custodial Agreement), Seller shall act as calculation agent under the Seller Custodial Agreement or the Buyer Custodial Agreement, as applicable. Seller agrees not to permit any amendment or other modification to the Seller Custodial Agreement that could adversely affect the right of Buyer to receive payments pursuant to [Section 3(e)] of the Seller Custodial Agreement. Buyer agrees not to permit any amendment or other modification to the Buyer Custodial Agreement that could adversely affect the right of Seller to receive payments pursuant to [Section 3(e)] of the Buyer Custodial Agreement.

Section 17.6 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR

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 Contracts, (ii) the appropriate individuals who are authorized to sign such agreements, (iii) specimen signatures of such authorized individuals, and (iv) the organization documents of Buyer, certified as being true and complete;

(c) by Seller, evidence reasonably satisfactory to Buyer of (i) Seller's authority to execute and deliver this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement; and

(d) at Seller's request at any time, Buyer shall provide Seller with a valid sales tax exemption certificate and any other required exemption or resale certificate in jurisdictions where sales of Energy occur under this Agreement to the extent such a certificate can be obtained and is necessary for exemption from any relevant state taxes that may be levied against the Parties in relation to the transactions under, or pursuant, to this Agreement.

Section 18.3 Entirety; Amendments.

(a) This Agreement and the Re-Pricing Agreement, including the exhibits and attachments hereto and thereto, constitute the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein and in the Re-Pricing Agreement. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

(b) If a Remarketing Non-Default Termination Event occurs, then Buyer and Seller may, upon mutual agreement in each Party's sole discretion, amend this Agreement to reduce the Contract Quantity for one or more subsequent Months and to obligate Seller to pay the Trustee for the account of Buyer, an amount sufficient, together with other funds available under the terms of the Bond Indenture for such purpose, to pay the redemption price of the Bonds to be redeemed on such redemption date and any settlement payable by Buyer due to the corresponding amendment to the Buyer Swap and the Interest Rate Swap, and Buyer and Seller may simultaneously amend Exhibit D to reduce the Termination Payment for one or more such Months, but in each case only if Buyer and Seller have delivered to the Trustee:

(i) An executed counterpart of such amendment;

(ii) An executed counterpart of an amendment to the relevant Power Supply Contracts reducing the Contract Quantity to be sold and delivered thereunder in the same Months by the same quantities;

(iii) An executed counterpart of an amendment to the Buyer Swap reducing the notional amounts thereunder for the same Months by the same quantities;

(iv) An executed counterpart of an amendment to the Interest Rate Swap reducing the notional amounts thereunder in each subsequent Month by the amount by which the principal amount of the Bonds of the related series scheduled to remain outstanding in such Month will be reduced as a result of such redemption;

(v) The revised schedules and notices required by [Section 2.01(b)] of the Bond Indenture in connection with any related partial redemption;

(vi) An [Accountant's Certificate] (as defined in the Bond Indenture) to the effect that each of (A) the scheduled Termination Payments for this Agreement for each Month thereafter is equal to or exceeds the aggregate principal amount of and interest on the Bonds scheduled to remain outstanding at the beginning of such Month, assuming that the Bonds are redeemed in accordance with the Bond Indenture, less the scheduled balance of the [Debt Service Fund] (as defined in the Bond Indenture) at the end of such Month and (B) the expected cashflow to the [Trust Estate] (as defined in the Bond Indenture) is sufficient to meet the ongoing debt service for the Bonds scheduled to remain outstanding;

(vii) The accompanying [Opinion of Bond Counsel] (as defined in the Bond Indenture) required by [Section 2.03(c)] of the Bond Indenture for such redemption; and

(viii) A [Rating Confirmation] (as defined in the Bond Indenture) in respect of such amendments and redemption.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW; *PROVIDED*, HOWEVER, THAT THE AUTHORITY OF BUYER TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party granting such waiver. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other, except that Seller shall act on behalf of Buyer in remarketing Energy pursuant to Exhibit C. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Buyer represents and covenants to and agrees with Seller that it is not entitled to and shall not assert the defense of sovereign immunity with respect to its obligations or any Claims under this Agreement.

Section 18.11 Rates and Indices.

(a) Commodity Reference Prices.

(i) Price Replacement Process for Energy. If a Daily Commodity Reference Price for Energy is not available for any Hour but such Daily Commodity Reference Price has not permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price for the applicable Hours. If such agreement is not reached by the Parties within three (3) Business Days, the Parties shall request quotations for the applicable Daily Commodity Reference Price from four (4) recognized dealers in the applicable commodity (two (2) selected by each Party) for the period that such Daily Commodity Reference Price is expected to be unavailable. If four (4) quotations are provided as requested, the applicable Daily Commodity Reference Price for the applicable Hours shall be the arithmetic mean of the quotations provided by each recognized dealer after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the applicable Daily Commodity Reference Price for the applicable Hours shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then the value of the two (2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received.

(ii) Price Replacement Process for Non-Published Index. If a Daily Commodity Reference Price is not available because it has permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price, which may include agreeing upon a published index or a basket of published indices ("Daily Replacement Index") from which to seek quotes for basis differentials as the replacement for the applicable Daily Commodity Reference Price. If such agreement is not reached by the Parties within three (3) Business Days, then the Daily Replacement Index shall be selected by Seller, acting reasonably. The Parties shall request quotations from four (4) recognized dealers in the applicable commodity (two (2) selected by each Party) for a basis differential ("Daily Basis Differential") between the Daily Replacement Index and physical prices at the relevant Delivery Point for the remaining term of this Agreement. If four (4) quotations are provided as requested, the Daily Basis Differential will be the arithmetic mean of the quotations provided by each recognized dealer, after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the Daily Basis Differential shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then the value of the two

(2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received. The applicable Daily Commodity Reference Price shall be the Daily Replacement Index plus the Daily Basis Differential calculated in accordance with the provisions of this clause (iii).

(b) Corrections. If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within thirty (30) days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 18.12 Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of Buyer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Buyer payable solely from Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Buyer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Buyer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Buyer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Rights of Trustee. Pursuant to the terms of the Bond Indenture, Buyer has irrevocably appointed the Trustee as its agent to issue notices (including Remarketing Notices, Call Option Notices, Put Option Notices and Repurchase Offers) and, as directed under the Bond Indenture, to take any other actions that Buyer is required or permitted to take under this Agreement. Seller may rely on notices or other actions taken by Buyer or the Trustee and Seller has the right to exclusively rely on any notices delivered by the Trustee that the Trustee is authorized to deliver under the Bond Indenture, regardless of any conflicting notices that it may receive from Buyer.

Section 18.15 Waiver of Defenses. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller's obligations pursuant to the terms of this Agreement.

Section 18.16 U.S. Resolution Stay. The Parties agree that (i) to the extent that prior to the date hereof the Parties hereto have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "Protocol"), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement and each Party shall be deemed to have the same status as Regulated Entity or Adhering Party as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the Parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "Bilateral Agreement"), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement and for such purposes each Party shall be deemed to have the same status as "Covered Entity", "Counterparty Entity" or "Client Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "Bilateral Terms") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" or the "Agency Version of Omnibus Agreement (for use with U.S. G-SIBs)", as applicable, published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement," Seller shall be deemed a "Covered Entity" and Buyer shall be deemed a "Counterparty Entity" (or "Client Entity" for the Agency version, as applicable). In the event that, after the date of this Agreement, the Parties hereto become adhering Parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "QFC Stay Terms"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Agreement" include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other. In addition, the Parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, as applicable, with all references to Seller replaced by references to the covered affiliate support provider.

"QFC Stay Rules" means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

Section 18.17 Rate Changes.

(a) Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 18.17(b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

(b) In addition, and notwithstanding Section 18.17(a), to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. In the event it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 18.17(b) shall not apply, *provided* that, consistent with Section 18.17(a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in Section 18.17(a).

IN WITNESS WHEREOF, the Parties have caused this Prepaid Energy Sales Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Separate Signature Page(s) Attached]

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To come.]

EXHIBIT A-2
EPS ENERGY PERIOD MONTHLY QUANTITY

[To come.]

EXHIBIT A-3
DAY-AHEAD AVERAGE PRICE WEIGHTING

[To come.]

EXHIBIT B

NOTICES

IF TO SELLER:	Morgan Stanley Energy Structuring, L.L.C. 1585 Broadway New York, NY 10036-8293
General Notices:	Attn: Miscellaneous Notices Phone: 914-225-1548 Email: [____]
Scheduling:	Attn: Natgas Schedulers, Steve Zanon Phone: 914-225-5483 Mobile: 914-327-1543 Email: natgas_schedulers@morganstanley.com Email: Steven.Zanon@morganstanley.com
Payments/Invoicing/ Statements:	Attn: Manager, Natural Gas Ops Phone: 443-627-6673 Fax: 914-750-1494 Email: physngsettle@morganstanley.com
IF TO ISSUER:	[_____]
Scheduling:	[_____]
Invoicing:	[_____]
Payments:	[_____] [_____] [_____] Attention: [_____]
Statements:	[_____]
General Notices:	[_____]

EXHIBIT C

COMMODITY REMARKETING

Section 1. Defined Terms. Capitalized terms used but not otherwise defined in this Exhibit shall have the meanings given to such terms in this Agreement, unless otherwise indicated. The following terms, when used in this Exhibit C and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Code" means the Internal Revenue Code of 1986, as amended.

"Daily Remarketing Notice" has the meaning specified in Section 3(c) of this Exhibit C.

"Energy Remarketing Reserve Fund" means an account established under the Bond Indenture into which Buyer shall deposit the amounts specified in Section 5(b) of this Exhibit C.

"Expired Non-Private Business Sales Ledger" has the meaning specified in Section 9(a) of this Exhibit C.

"Expired Private Business Sales Ledger" has the meaning specified in Section 9(a) of this Exhibit C.

"Ledger Entry" has the meaning specified in Section 7(d) of this Exhibit C.

"Minimum Remarketing Sales Price" is an amount determined for Energy by the following formula:

MRSP = RRPP - (RRPP x (RRF/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 Contracts.

"Monthly Remarketing Notice" has the meaning specified in Section 3(b) of this Exhibit C.

"Municipal Utility" means any Person that (a) (i) is a "governmental person" as defined in Treasury Regulation Section 1.141-1(b) and (ii) owns an electric distribution utility (or provides Energy at wholesale to entities described in clause (i) that own such utilities) or (b) is a community choice aggregator organized under the Laws of the State of California. Buyer may from time to time revise the definition of "Municipal Utility" to conform to the applicable provisions of the

Code or Treasury Regulations by delivery of written notice to Seller setting forth the revised definition together with a Tax Opinion.

"Net Participant Price" means, with respect to all Project Participants, the Contract Index Price less the Monthly Discount.

"Non-Private Business Remarketing Proceeds" means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller's remarketing of Energy in any Non-Private Business Sale.

"Non-Private Business Sale" means a sale (other than a Qualified Sale) of Energy to a "governmental person" as defined in Treasury Regulation Section 1.141-1(b) that in each case agrees in writing to not use any part of such Energy for a Private Business Use.

"Non-Private Business Sales Ledger" has the meaning specified in Section 7(a) of this Exhibit C.

"Non-Qualifying Remarketing Limit" means a quantity of Energy, in MWhs, equal to 10% of the total quantity of Energy, in MWhs, to be delivered hereunder, as such Non-Qualifying Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Non-Qualifying Remarketing Limit

"Private Business Remarketing Limit" means a quantity of Energy in MWhs equal to (a) $15,000,000, divided by (b) the Specified Fixed Price, as such Private Business Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Private Business Remarketing Limit.

"Private Business Remarketing Proceeds" means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller's remarketing of Energy in any Private Business Sale (including the purchase of such Energy by Seller for its own account).

"Private Business Sale" means any sale of Energy other than in a Non-Private Business Sale or a Qualified Sale.

"Private Business Sales Ledger" has the meaning specified in Section 7(b) of this Exhibit C.

"Private Business Use" has the meaning ascribed to such term in Section 141 of the Code.

"Qualified Sale" means the sale of Energy to a Municipal Utility that agrees in writing (i) to use all of such Energy for a Qualifying Use that is not a Private Business Use and (ii) not to count any purchase of such Energy towards any remediation obligations such Municipal Utility may have with respect to proceeds received from the sale of property purchased with tax-exempt financing proceeds.

"Qualifying Use" with respect to Energy has the meaning ascribed to such term in Treasury Regulations Section 1.148-1(e)(2)(iii)(A)(2) or (B)(2), as applicable.

"Remarketing Fee" means the amount specified in Exhibit F of this Agreement.

"Remarketing Non-Default Termination Event" has the meaning specified in Section 9(c) of this Exhibit C.

"Remarketing Notice" means either a Daily Remarketing Notice or a Monthly Remarketing Notice.

"Remediation Remarketing" means the remarketing of Energy in Qualified Sales by Seller pursuant to Section 8 of this Exhibit C in an effort to reduce to zero (0) any Ledger Entry balances in either the Non-Private Business Sales Ledger or the Private Business Sales Ledger.

"Remediation Remarketing Purchase Price" has the meaning specified in Section 8(b)(ii) of this Exhibit C.

"Tax Opinion" means an [Opinion of Bond Counsel] (as defined in the Bond Indenture) to the effect that an action proposed to be taken is not prohibited by the Bond Indenture or the Laws of the United States and will not adversely affect the exclusion from gross income for U.S. federal income tax purposes of interest on any Bonds the interest on which is intended to be excluded from such gross income under Section 103(a) of the Code.

"Treasury Regulations" means the U.S. Treasury Regulations under the Code.

Section 2. Buyer's Right and Obligation to Request Remarketing. Buyer may, and, if required to do so under the Bond Indenture or the terms of this Agreement shall, request Seller to remarket, pursuant to this Exhibit C, all or a specified part of the Contract Quantities for any Delivery Point.

Section 3. Remarketing Notice.

(a) Generally. To request remarketing under this Exhibit C, Buyer must issue a Remarketing Notice, which Remarketing Notice must state as applicable (i) the portion of the Contract Quantity to be 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.

(c) Daily Remarketing Notice. Buyer may designate a Remarketing Notice as a "Daily Remarketing Notice" if the Remarketing Notice is delivered to Seller not later than three (3) Business Days prior to the Business Day in which it applies.

Section 4. Seller's Remarketing Obligations Generally.

(a) All Energy 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.

Section 5. Remarketing.

(a) Remarketing of Assigned Energy. Notwithstanding anything to the contrary herein, if the Monthly Quantity of Energy exceeds the quantity of Assigned Energy actually delivered in any Month, then (i) Buyer will be deemed to have requested for Seller to remarket the Assigned Energy not delivered (regardless of whether a Monthly Remarketing Notice or Daily Remarketing Notice was delivered) and (ii) Seller shall sell such Energy or cause such Energy to be sold in a Private Business Sale at a price not less than (A) [the applicable Contract Fixed Price during the Initial EPS Energy Periods][3] and (B) the Day-Ahead Average Price during any EPS Energy Period subsequent to the Initial EPS Energy Periods. Seller shall pay Buyer for any such Month the product of (I) the Monthly Quantity of Energy, less the amount of Assigned Energy actually delivered, multiplied by (II) the applicable price (as determined under the immediately preceding sentence). All such sales shall constitute a Private Business Sale and shall be reflected on the Private Business Sales Ledger. Buyer shall notify Seller if and to the extent the proceeds from such Private Business Sales are applied to amounts owed by the Project Participants pursuant to Section [7.5] of the Power Supply Contracts, and, to the extent so applied, such proceeds shall remediate such Private Business Sales and be entered as debits on the Private Business Sales Ledger.

(b) Remarketing of Base Energy. The following provisions shall apply to the remarketing of Base Energy by Seller:

[3] HB NTD: To be updated as necessary to reflect pricing under the Assigned PPAs for the initial period.

(i) Seller shall use Commercially Reasonable Efforts to remarket or cause to be remarketed all Base Energy specified for remarketing. In exercising such Commercially Reasonable Efforts, Seller shall first attempt to remarket or cause to be 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:

A. the Day-Ahead Market Price applicable to such Energy in the case of a Monthly Remarketing Notice, or

B. the Real-Time Market Price applicable to such Energy in the case of a Daily Remarketing Notice.

(iii) Notwithstanding the foregoing or anything to the contrary herein, provided that (A) a Project Participant is not in default under its Power Supply Contract, (B) such Project Participant has exercised Commercially Reasonable Efforts (as determined by Special Tax Counsel (as defined in the Bond Indenture)) to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement and (C) Seller is remarketing such Project Participant's portion of the Contract Quantity because an EPS Energy Period is not in effect, then:

A. Seller shall purchase Energy for its own account and shall pay Buyer the product of (A) the quantity of such Energy purchased for its own account and (B) the Day-Ahead Market Price;

B. Proceeds received by Buyer under this Section 5(b)(iii) that exceed the amount Buyer would have received for the same quantity of Energy at the Net Participant Price shall be deposited in the [Participant Rebate Account] (as defined in the Bond Indenture) of the Energy Remarketing Reserve Fund;

C. the Project Participant shall be required under [Section 7.5] of the Power Supply Contract to exercise Commercially Reasonable Efforts to purchase Energy for a Qualifying Use to remediate any Ledger Entry resulting from Seller's purchase of Energy; and

D. if any Ledger Entry has not been reversed within twelve Months of the date of any such Ledger Entry, Seller thereafter shall exercise Commercially Reasonable Efforts to remediate any such Ledger Entry by making a Qualified Sale to a Project Participant or any other Municipal Utility;

provided that, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time a Project Participant has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder consistent with the applicable Assignment Letter Agreement, the provisions of this Section 5(b)(iii) shall not apply and any Ledger Entries resulting from Seller's remarketing of Base Energy in such case may not be remediated by Project Participant.

(iv) Proceeds from Qualified Sales and Non-Private Business Sales.

A. For any Energy specified in a Monthly Remarketing Notice that Seller remarkets in a Qualified Sale or Non-Private Business Sale, Seller shall deliver to Buyer the actual proceeds less the Remarketing Fee per MWh sold, *provided* that the aggregate amount delivered by Seller under this clause (A) for any Month shall not be less than the aggregate quantity so remarketed during such Month multiplied by the Net Participant Price.

B. For any Energy specified in a Daily Remarketing Notice that Seller remarkets in a Qualified Sale or Non-Private Business Sale, Seller shall deliver to Buyer the actual proceeds received with respect to such Energy less the Remarketing Fee per MWh sold *provided* that the aggregate amount delivered by Seller under this clause (B) for any such Energy shall not be less than the aggregate amount that would have been paid to Buyer under Section 5(b)(v)(B) of this Exhibit C (with respect to Energy specified in a Daily Remarketing Notice), in each case less the Monthly Discount per MWh.

C. In the event the payment due date under a Qualified Sale or Non-Private Business Sale has not yet occurred prior to the date upon which payment is due under this Agreement for the applicable Month, the Parties shall nonetheless issue statements as if the full amount from such Qualified Sale or Non-Private Business Sale had been paid and, if such full payment is not received prior to the next Monthly due date under this Agreement, the Parties shall issue the appropriate statements to reflect the actual proceeds received and true-up any difference.

(v) Proceeds from Private Business Sales.

A. For any Energy specified in a Monthly Remarketing Notice that is not 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:

P = Q x (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. For any Energy specified in a Daily Remarketing Notice that is not remarketed in a Qualified Sale or Non-Private Business Sale, Seller shall pay to Buyer the positive result determined by the following formula with respect to each Delivery Point to which such Daily Remarketing Notice applied:

P = Q x (IPL - RF)

Where:

P = The amount payable by Seller under this Section 5(b)(v)(B)

Q = The quantity of such Energy remarketed with respect to such Delivery Point

IPL = The Energy Real-Time Market Price for such Delivery Point

RF = The Remarketing Fee

(vi) Energy Remarketing Reserve Fund. Any proceeds received by Buyer under this Section 5 for Energy remarketed in sales other than Qualified Sales that exceed the amount Buyer would have received for the same quantity of Energy at the Net Participant Price shall be deposited in the Energy Remarketing Reserve Fund.

Section 6. Reserved.

Section 7. Tracking Remarketing Proceeds. Seller shall maintain four (4) separate ledgers related to remarketing proceeds as described below:

(a) One (1) ledger (the "Non-Private Business Sales Ledger") shall include, (A) as dollar credits, the Non-Private Business Remarketing Proceeds, and (B) as a MWh credit, the MWhs corresponding to such Non-Private Business Remarketing Proceeds.

(b) Another ledger (the "Private Business Sales Ledger") shall include, (A) as dollar credits, Private Business Remarketing Proceeds, and (B) as a MWh credit, the MWhs corresponding to such Private Business Remarketing Proceeds.

(c) The other two (2) ledgers shall be maintained as described in Section 9(a) of this Exhibit C.

(d) The credits to be recorded in the ledgers described in Section 7(a) and (b) of this Exhibit C (collectively, the "Ledger Entries") shall be dated as of the first day of the Month

prior to the Month in which Buyer or Project Participant receives the proceeds corresponding to such Ledger Entries.

(e) The four (4) ledgers described in this Section 7 of this Exhibit C and all debits and credits to such ledgers shall be kept on an aggregate basis for purposes of this Exhibit C.

Section 8. Remediation Remarketing and Bond Redemptions. At any time that the net Ledger Entry balance of either the Non-Private Business Sales Ledger or the Private Business Sales Ledger is greater than zero (0):

(a) Buyer shall exercise Commercially Reasonable Efforts to utilize the proceeds represented by the dollar balances of such Ledger Entries to purchase Energy for resale in Qualified Sales and shall promptly notify Seller following such purchase and sale.

(b) Seller shall exercise Commercially Reasonable Efforts to locate opportunities for Buyer to purchase Energy to sell in Qualified Sales to remediate the proceeds represented by the dollar balances of the Ledger Entries. In this regard, if Seller locates a Remediation Remarketing opportunity, then

(i) Seller shall notify Buyer of such opportunity;

(ii) Buyer shall, upon receipt of such notice, purchase Energy from Seller at a price determined by Seller in a Commercially Reasonable manner based upon applicable market prices at the location where the remarketing opportunity sale will occur (the "Remediation Remarketing Purchase Price");

(iii) Seller shall remarket such Energy on Buyer's behalf in a Qualified Sale;

(iv) Seller shall remit to Buyer the proceeds collected from such Qualified Sale, but in no event shall Seller remit less than the Minimum Remarketing Sales Price for the remarketing transaction; *provided*, however, that to the extent Seller does not receive the Remediation Remarketing Purchase Price from Buyer prior to the Remediation Remarketing described herein, Seller shall credit the proceeds collected from such remarketing sale against the Remediation Remarketing Purchase Price owed to Seller, and Seller shall be reimbursed from the Energy Remarketing Reserve Fund to the extent necessary to make Seller whole for such Qualified Sale; and

(v) Seller shall issue to Buyer a confirmation notice (including the dollar price and MWhs) of each purchase of Energy by or on behalf of Buyer, and each sale of Energy on Buyer's behalf, under this Section 8, and amounts due from or to Buyer shall be separately stated on the Billing Statement for the Month in which such remarketing transactions occur.

For the avoidance of doubt, Seller shall not sell, nor be required to sell, Energy to Buyer for a Remediation Remarketing if such Energy is to be 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 (10^{th}) day of each Month, Seller shall provide to Buyer copies of the Non-Private Business Sales Ledger, the Private Business Sales Ledger, the Expired Non-Private Business Sales Ledger and the Expired Private Business Sales Ledger showing all credits and debits to each such ledger since the Execution Date.

(c) A "Remarketing Non-Default Termination Event" shall occur if, at any time, either (i) (A) the sum of all Btu credits on the Expired Non-Private Business Sales Ledger and the Expired Private Business Sales Ledger exceeds (B) the Non-Qualifying Remarketing Limit, or (ii) (A) the sum of all Btu credits on the Expired Private Business Sales Ledger exceeds (B) the Private Business Remarketing Limit.

(d) The occurrence of a Remarketing Non-Default Termination Event and any remedies associated therewith in Article XVII of this Agreement shall be Buyer's sole and exclusive remedies with respect to any inability by Seller to purchase and remarket Energy for Buyer pursuant to, or any breach by Seller of its obligations under, this Exhibit C.

Section 10. Buyer Right to Request to Purchase Remarketed Energy. Notwithstanding any other provision of this Exhibit C, Buyer may request in a Remarketing Notice delivered to Seller that Buyer be the remarketing buyer of the quantities of Energy described in such Remarketing Notice, in which case Seller will sell such remarketed Energy to Buyer at a price, at Delivery Point(s) and on date(s) to be mutually agreed (but the price, with respect to Energy remarketed pursuant to a Monthly Remarketing Notice, shall in no event be less than the Contract Index Price less the Monthly Discount) by the Parties, provided that Seller shall be obligated to remarket such Energy to Buyer only if all of the following conditions are satisfied:

(a) Buyer is not in default under any Transaction Document;

(b) Buyer has certified to Seller in the Remarketing Notice that the condition in (a) above is true;

(c) Buyer has provided such adequate assurances of Buyer's performance, if any, as may have been reasonably requested by Seller;

(d) there is a master agreement in effect between Buyer and Seller that will govern the remarketing transaction between Buyer and Seller; and

(e) Buyer covenants to resell the Energy only in Qualified Sales.

EXHIBIT D

TERMINATION PAYMENT SCHEDULE

The Termination Payment for any Early Termination Payment Date will be the amount set forth on the attached table in the column corresponding to the month in which the Early Termination Date occurs, plus the product of (a) the Contract Quantity for such Month, minus the quantity of Energy required to have been delivered in such Month prior to the effectiveness of such Early Termination Date, multiplied by (b) the result of (i) the [Fixed Price] for Energy (as defined in the Buyer Swap), minus (ii) the Specified Discount then in effect.

(To be attached.)

EXHIBIT D-1

TERMINATION PAYMENT ADJUSTMENT SCHEDULE

(To be attached pursuant to Section 17.8 as required.)

EXHIBIT E

FORM OF MORGAN STANLEY GUARANTEE

Morgan Stanley

1585 BROADWAY

NEW YORK, NY 10036-8293

[DATE]

To: [_____]

Ladies and Gentlemen:

In consideration of California Community Choice Financing Authority (hereinafter "Counterparty") having entered into or entering into (i) that certain Prepaid Energy Sales Agreement, dated as of [_____], 2021, with Morgan Stanley Energy Structuring, L.L.C. (hereinafter "Obligor") (the "Prepaid Agreement") and (ii) that ISDA Master Agreement, dated as of [_____], 2021, the Schedule, dated as of [_____], 2021, and Confirmations, dated as of [_____], 2021, with Obligor (together with the Prepaid Agreement, the "Agreements"), Morgan Stanley, a Delaware corporation (hereinafter "Guarantor"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreements, the due and punctual payment of all amounts payable by Obligor under the Agreements when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination or otherwise, in accordance with, and subject to, the terms of the Agreements and giving effect to any applicable grace period. Upon failure of Obligor punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this guarantee (the "Guarantee") (or to such other address as Guarantor may specify in writing), Guarantor agrees to pay or cause to be paid such amounts owed by Obligor; *provided* that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee; *provided further* that any payment made by Guarantor hereunder will be made directly to [____], as trustee under the [Bond Indenture] (as defined in the Prepaid Agreement), or to any successor trustee under the Bond Indenture and that such payment shall be deemed to be a payment to Counterparty hereunder. This Guarantee is of payment and not of collection.

Guarantor hereby agrees that its obligations hereunder shall be continuing and unconditional and will not be discharged except by complete payment of the amounts payable under the Agreements, irrespective of (1) any claim as to the Agreements' validity, regularity or enforceability or the lack of authority of Obligor to execute or deliver the Agreements; or (2) any change in or amendment to the Agreements; or (3) any waiver or consent by Counterparty with respect to any provisions thereof; or (4) the absence or existence of any action to enforce the Agreements, or the recovery

of any judgment against Obligor or of any action to enforce a judgment against Obligor under the Agreements; or (5) the dissolution, winding up, liquidation or insolvency of Obligor, including any discharge of obligations therefrom; or (6) any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

Guarantor hereby waives diligence, presentment, demand on Obligor for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against Obligor and protest or notice, except as provided for in the Agreements with respect to amounts payable by Obligor. If at any time payment under the Agreements is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of Obligor or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

Guarantor represents to Counterparty, as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

2. its execution, delivery and performance of this Guarantee has been and remains duly authorized by all necessary corporate action and does not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' right or by general equity principles.

Each of the provisions contained in this Guarantee shall be severable and distinct from one another and if one or more of such provisions are now or hereafter becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected, prejudiced or impaired thereby.

By accepting this Guarantee and executing the Agreements, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guarantee, *provided* that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by Obligor under the Agreements.

This Guarantee shall expire or terminate, as applicable, on the earliest of (i) [____], 20[__] (ii) the earlier termination of the Prepaid Agreement and (iii) the last day of any [Reset Period (as defined in the Prepaid Agreement)] if Guarantor (A) has delivered to Counterparty a termination notice of this Guarantee, and (B) no assignment has been effected pursuant to clause (c) of [Article XIII of the Prepaid Agreement] prior to the end of the Reset Period during which such termination notice was delivered. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of Obligor with respect to obligations and liabilities incurred prior to such expiration or termination.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreements.

MORGAN STANLEY

By:

Name:
Title:
Address: 1585 Broadway
New York, NY 10036
Attn: Treasurer
Fax No.: 212-762-0337
Phone: 212-761-4000

EXHIBIT F

PRICING AND OTHER TERMS

Delivery Period:[4]	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 Re-Pricing Agreement) pursuant to the Re-Pricing Agreement
Prepayment:[5]	$[_____]
Prepayment Outside Date:[6]	[_____]
Remarketing Fee:[7]	$[___]/MWh for any Energy remarketed pursuant to a Monthly Remarketing Notice $[___]/MWh for any Energy remarketed pursuant to a Daily Remarketing Notice
Fixed Price:[8]	$[___]/MWh
Specified Fixed Price:[9]	$[___]/MWh
Specified Discount:[10]	For Energy delivered [____] – [____]: $[____]/ MWh For Energy delivered [____] - [_____]: to be the [Available Discount] for such Reset Period

[4] NTD: MSCG to confirm.
[5] NTD: To come on date of pricing.
[6] NTD: Date to be 3 weeks post-signing.
[7] NTD: The Remarketing Fee is an amount deducted from remarketing proceeds delivered to Buyer.
[8] NTD: Fixed Price to equal swap spread, plus swap fees, plus MSCG spread.
[9] NTD: Specified Fixed Price to equal the Prepayment amount divided by the total quantity of Energy to be delivered.
[10] NTD: This is used for discounting amounts owed by Buyer to Seller for amounts already delivered prior to a termination.

EXHIBIT G

RECEIVABLES PURCHASES

[To be attached.]

RE-PRICING AGREEMENT

This RE-PRICING AGREEMENT, dated as of [_____], 2021 (this "Agreement"), is entered into by and between Morgan Stanley Energy Structuring, L.L.C. ("MSES") and [_____] ("Issuer"). MSES and Issuer are sometimes referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth in Section 1.

WHEREAS, Issuer is issuing the [Series 2021A] Bonds pursuant to the Indenture in order to provide funds to acquire the Energy Supply from MSES pursuant to the Prepaid Agreement; and

WHEREAS, in connection with its acquisition of the Energy Supply, Issuer has entered into Power Supply Contracts with the Project Participants providing for the sale of the Energy Supply by Issuer to the Project Participants; and

WHEREAS, the price payable by the Project Participants for the Energy Supply includes a discount to the index price set forth in the applicable Power Supply Contract, which discount has been established for the Initial Reset Period therein and will be re-established for each subsequent Reset Period under the terms and conditions set forth herein; and

WHEREAS, under the terms of the Power Supply Contract, prior to each Reset Period after the Initial Reset Period, each Project Participant may elect to have its Energy Supply remarketed if the Available Discount established for such Reset Period is less than the Minimum Discount specified in the Power Supply Contract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions. When used herein, the following capitalized terms shall have the following meanings:

"Additional Reduction Amount" has the meaning set forth in Appendix A.

"Alternative Supplier" means any Person that (i) has a Credit Rating equal to or better than Morgan Stanley's Credit Rating and (ii) agrees that, if the Prepaid Agreement and other related agreements entered into by Prepaid Supplier (the "Prepaid Supplier Documents") are novated to it, it will deliver an opinion or opinions of counsel in a form acceptable to Issuer, Bond Counsel (as defined in the Bond Indenture) and Swap Counterparty (as defined in the Prepaid Contract) that each of the Prepaid Supplier Documents are duly authorized by and enforceable against it.

["Available Discount" has the meaning specified in the Power Supply Contracts] and also means, for each Reset Period, the final amount determined by MSES as of the applicable Bond Pricing Date pursuant to Appendix A, expressed in cents per MWh (rounded down to the nearest one-half cent).

"Bond Closing Date" means the date on which the Bonds are issued pursuant to the Indenture.

"Bond Pricing Date" means, for any Reset Period, the date upon which the interest rate and yield on the Bonds is established pursuant to the applicable bond remarketing agreement or bond purchase agreement.

["Bonds" has the meaning set forth in the Indenture.]

["Business Day" has the meaning set forth in the Indenture.]

["Contract Quantity" has the meaning set forth in the Prepaid Agreement.]

"Credit Rating" means the credit rating assigned by of Moody's Investors Service, Inc. and Fitch Ratings, Inc. (and any successors thereto) to a Person's senior, unsecured long-term debt obligations (not supported by third party credit enhancements).

["Delivery Period" has the meaning set forth in the Prepaid Agreement.]

"Delivery Period Implied Rate" has the meaning set forth in Appendix A.

"Determination Month" has the meaning set forth in Appendix A.

["Energy" has the meaning set forth in the Prepaid Agreement.]

"Energy Supply" means with respect to the Prepaid Agreement, the aggregate Contract Quantities of Energy to be delivered by MSES under the Prepaid Agreement.

"Estimated Available Discount" has the meaning set forth in Section 5(a).

"Excess Amount" is the positive difference, if any, of the Prior Remaining Energy Value less the New Remaining Delivery Cost.

"Fixed Rate" has the meaning set forth in Appendix A.

"Guarantor" means Morgan Stanley, a Delaware corporation, in its capacity as the guarantor of MSES's payment obligations under the Prepaid Agreement.

"Indenture" means the Trust Indenture, dated as of the first day of the month of the Bond Closing Date, between Issuer and the Trustee, as the same may be amended or supplemented from time to time pursuant to one or more Supplemental Indentures, or any other trust indenture under which refunding bonds are issued and secured.

"Initial Reset Period" means the period from [_____], 2021 – [_____], 20[_____].

["Interest Rate Period" has the meaning set forth in the Indenture, provided that if the Bonds are Outstanding in two or more Series with separate, concurrent and co-terminus Interest Rate Periods, "Interest Rate Period" shall mean all such Interest Rate Periods collectively].

["Mandatory Purchase Date" has the meaning set forth in the Indenture.]

["Minimum Discount" has the meaning set forth in the Power Supply Contracts.]

"Monthly Contract Quantity" means, for any month, the aggregate Contract Quantities scheduled to be delivered by MSES to Issuer under the Prepaid Agreement for such month.

"Monthly Discount" has the meaning set forth in Section 6(b).

["Morgan Stanley Guaranty" has the meaning set forth in the Prepaid Agreement.]

"MSES" has the meaning set forth in the preamble.

"MWh" means megawatt-hour.

"New Remaining Delivery Cost" has the meaning set forth in Appendix A.

"New Reset Period" has the meaning set forth in Appendix A.

"Old Reset Period" has the meaning set forth in Appendix A.

["Outstanding" has the meaning set forth in the Indenture.]

"Participant Notification Deadline Day" means, with respect to each Reset Period, the last day on which Issuer is permitted to provide a notice of the Estimated Available Discount to Project Participants under the Power Supply Contracts.

"Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or government agency.

"Prepaid Agreement" means the Prepaid Energy Sales Agreement, dated as of [_____], 2021, between MSES and Issuer, as the same may be amended or supplemented in accordance with its terms.

"Prepaid Supplier Documents" has the meaning specified in the definition of Alternative Supplier.

"Prior Remaining Energy Value" has the meaning set forth in Appendix A.

["Project Participant" has the meaning set forth in the Indenture.]

"Power Supply Contract" means, individually or collectively, any or all of the separate Energy Supply Agreements, relating to the [Energy Project as defined in the Indenture], between Issuer and a Project Participant, as each may be amended from time to time.

"Re-pricing Date" means, for any Reset Period, any Business Day not earlier than ninety (90) days prior to the earlier of (i) the date on which the Bonds then Outstanding may be called for optional redemption in accordance with the Indenture and (ii) the day following the last day of the Reset Period then in effect.

"Remaining Delivery Cost" has the meaning set forth in Appendix A.

"Remaining Energy Value" has the meaning set forth in Appendix A.

"Reset Period" means the Initial Reset Period and each period determined pursuant to Section 3.

"Reset Period Implied Rate" has the meaning set forth in Appendix A.

"Series" means Bonds designated as a Series and authorized to be issued by Issuer pursuant to [Section 2.01 of the Indenture].

["Series 2021A Bonds" has the meaning set forth in the Indenture.]

"SOFR" means the Secured Overnight Financing Rate administered by the Federal Reserve Bank of New York (or a successor administrator) and provided on the New York Fed's Website.

"Supplemental Indenture" means any indenture supplemental to or amendatory of the Indenture executed and delivered by Issuer and the Trustee in accordance with [Article X of the Indenture].

["Termination Payment" has the meaning set forth in the Prepaid Agreement.]

["Termination Payment Adjustment Schedule" has the meaning set forth in the Prepaid Agreement.]

"Trustee" means the trustee under the Indenture and its successors and assigns.

Section 2. Purpose of Agreement and Intention of Parties. The Parties are entering into this Agreement in connection with the execution and delivery of the Indenture, the Prepaid Agreement and the other transaction documents for the purpose of establishing the methodology for determining the Available Discount for each Reset Period following the Initial Reset Period.

Section 3. Reset Periods. Each Reset Period shall commence on the next day that follows the last day of the Initial Reset Period or, subsequently, the immediately prior Reset Period. The length of each Reset Period shall be the remaining term of the Delivery Period unless MSES elects, in its sole discretion following consultation with Issuer, a shorter period, which period may not be shorter than the lesser of (a) three (3) years or (b) the remaining term of the Delivery Period without Issuer's consent; *provided further* that:

(i) The Initial Reset Period and each subsequent Reset Period (other than the final Reset Period) shall end the last day of the month preceding the end of the applicable Interest Rate Period. For example, if the Interest Rate Period ends October 31, the last day of the Reset Period would end September 30, and

(ii) the final Reset Period shall end on the last day of the Delivery Period.

Section 4. Morgan Stanley Guaranty. The Morgan Stanley Guaranty terminates on the earliest of (i) the end of the Delivery Period; (ii) the earlier termination of the Prepaid Agreement (including through the date of any Termination Payment thereunder); and (iii) the last day of any Reset Period, if the Guarantor provides written notice of termination of the Morgan Stanley Guaranty. Unless the Morgan Stanley Guaranty is terminated, the Morgan Stanley Guaranty shall remain in effect for the next Reset Period at the time of, or prior to, the delivery of any refunding or remarketing bonds.

Section 5. Estimated Available Discount; Alternative Suppliers.

(a) Initial Estimated Available Discount.

(i) Initial Estimate by MSES. Not later than (A) eight months prior to a Mandatory Purchase Date that occurs in 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 in February, May, August or November and (B) 135 days prior to a Mandatory Purchase Date that occurs in any other month, Issuer may notify MSES that an Alternative Supplier has provided an Estimated Available Discount that materially exceeds MSES's previously provided Estimated Discount Rate (an "Alternative Estimated Available Discount"), which notice must include (1) the identity of the Alternative Supplier, (2) the Alternative Estimated Available Discount, and (3) certification by Issuer's financial advisor of a reasonable expectation of the Alternative Supplier's ability to deliver such a proposed Estimated Alternative Discount based on then-current market conditions and to achieve a successful Bond closing for such upcoming Reset Period.

(ii) MSES Option to Match Alternative Estimated Available Discount. Within 15 days of receiving notice of an Alternative Estimated Available Discount meeting the foregoing requirements, MSES will notify Issuer if Guarantor could, based on then-current market conditions, match the Alternative Estimated Available Discount. If MSES so notifies Issuer, MSES will thereafter exercise commercially reasonable efforts to meet or exceed the Alternative Estimated Alternative Discount as of the Bond Pricing Date for the next Reset Period and Issuer will reasonably cooperate with MSES in connection therewith; provided that Issuer acknowledges the actual Available Discount will be determined on such Bond Pricing Date based on then-current market conditions but will remain subject to the Minimum Discount requirements.

(iii) Conditional Novation to Alternative Supplier. If MSES does not provide a notice of Guarantor's ability to meet the Estimated Available Discount in accordance with the foregoing, then MSES shall cooperate with Issuer and the Alternative Supplier to cause the Prepaid Supplier Documents to be novated to the Alternative Supplier as of the first day of the next Reset Period, which novation must be conditionally binding not later than two months prior to the Mandatory Purchase Date, subject only to successful closing of the new Bonds. Following the execution of such novation documents, MSES and Guarantor will have no obligations under any transaction documents for the next Reset Period other than those obligations that would have existed had the Prepaid Agreement terminated at the end of the then-current Reset Period. In the event of a Failed Remarketing (as defined in the Indenture) by the Alternative Supplier, MSES, may at its option and if all parties are in agreement, elect to attempt to remarket the transaction if MSES deems there is sufficient time to do so prior to the Mandatory Purchase Date.

(c) Notices to Project Participants. Issuer shall notify each of the Project Participants of the Estimated Available Discount and any updates thereto under the relevant provisions of the Power Supply Contracts. Unless MSES and Issuer otherwise agree, in any notice of Estimated Available Discount provided to a Project Participant prior to the Participant Notification Deadline Day, Issuer shall clearly indicate in such notice that the notice is provisional and is not intended to, and does not, trigger a Project Participant's right to provide a [Remarketing Election Notice (as defined in the Power Supply Contracts)].

Section 6. Determination of Available Discount and Monthly Discount.

(a) MSES shall determine on the Bond Pricing Date the Available Discount for such Reset Period (expressed in cents per MWh and rounded down to the nearest one-half cent) in accordance with the methodology set forth in Appendix A.

(b) For each Reset Period after the Initial Reset Period, MSES shall determine the monthly discount portion of the Available Discount for such Reset Period (the "Monthly Discount"). Issuer and MSES then shall mutually agree upon the projected [Annual Refund] (as defined in the Power Supply Contracts) for such Reset Period, which shall be determined consistent with [Section 4.5 of the Power Supply Contracts] and shall be the remaining portion of the Available Discount. MSES and Issuer acknowledge that the purpose of retaining a portion of

the Available Discount for distribution in the Annual Refund is to mitigate the risk to bondholders of reduced or lost investment income on any investments held under the Indenture.

Section 7. Termination Payment Adjustment Schedule; Monthly Quantity Changes.

(a) For any Reset Period, MSES may modify the Termination Payment Adjustment Schedule to reflect changes in the Remaining Energy Values set forth on Attachment 1 to Appendix A and otherwise, provided that such modifications are sufficient to meet the redemption requirements of the Bonds to be sold for such Reset Period.

(b) Issuer and MSES agree that the Prepaid Agreement will be amended to reflect any reductions to Monthly Contract Quantities determined pursuant to Appendix A.

Section 8. Timing. The dates and time intervals stated in this Agreement may be waived or altered by the mutual agreement of the Parties.

Section 9. Termination. This Agreement shall terminate automatically upon termination of the Prepaid Agreement for any reason, including but not limited to election by the Guarantor to terminate the Morgan Stanley Guaranty pursuant to its terms. For the avoidance of doubt, nothing in this Agreement or any other agreement restricts the ability of Guarantor to terminate the Morgan Stanley Guaranty as set forth in the Morgan Stanley Guaranty, effective as of the end of a Reset Period, which election to terminate may be made by Guarantor in its sole and absolute discretion. Any such termination shall not be considered a failure by MSES to act in good faith hereunder, regardless of whether the Parties have previously discussed pricing that may apply to any Reset Period or otherwise taken the steps required under this Agreement. MSES shall not be required to provide estimates hereunder or otherwise take or continue the steps toward determining pricing hereunder for any Reset Period if the Guarantor exercises its right to terminate the Morgan Stanley Guaranty.

Section 10. Communications.

(a) All notices, requests and other communications shall be in writing (including facsimile, electronic mail or other electronic means) provided to the address and/or electronic mail address set forth below:

MSES: As provided in the Prepaid Agreement

Issuer: As provided in the Prepaid Agreement

(b) Each Party may change the address for communications to it pursuant to the terms of the referenced agreement, which notice shall be effective when delivered at the address specified herein.

Section 11. Miscellaneous.

(a) *Miscellaneous*. Article X [Jurisdiction, Waiver of Jury Trial, Dispute Resolution] and Sections 18.3 [Entirety; Amendments], 18.4 [Governing Law], 18.5 [Non-Waiver], 18.6

[Severability], 18.7 [Exhibits], 18.9 [Relationship of Parties], 18.13 [Counterparts] of the Prepaid Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

(b) *Amendments to Power Supply Contracts and Indenture*. Issuer shall not agree to or consent to any modification, supplement, amendment or waiver of any provision of the Power Supply Contracts or the Indenture that affects the meaning of any defined term herein or the operation of any provision hereof.

(c) *Assignment*. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party hereto without the prior written consent of the other Party; provided that each Party acknowledges and agrees that the other Party shall assign all of its right, title and interest in, to and under this Agreement in connection with any assignment by either Party of its right, title and interest in, to and under the Prepaid Agreement to the assignee thereof, which assignment shall constitute a novation.

[Separate Signature Page(s) Attached]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first above written.

MORGAN STANLEY ENERGY
STRUCTURING, L.L.C.

By:_____
Name:_____
Title:_____

[_____]

By:_____
Name:_____
Title:_____

Appendix A

MSES will undertake the following steps in determining the Available Discount for any Reset Period (each, a "New Reset Period"):

- Step 1: Determine the "Prior Remaining Energy Value"
  - MSES will determine the Remaining Energy Value for the last month of the current Reset Period (the "Old Reset Period") based on Attachment 1 hereto, as such Attachment initially existed or was last updated at the beginning of the prior Reset Period (the "Prior Remaining Energy Value").
  - "Remaining Energy Value" means, for any month, the amount set forth on Attachment 1 of Appendix A as the "Remaining Energy Value" for such month, as Attachment 1 may be updated pursuant to this Appendix A in connection with the establishment of any new Reset Period.

- Step 2: MSES will specify the length of the New Reset Period pursuant to [Section 3 of the Agreement]

- Step 3: MSES will specify a Reset Period Implied Rate for the New Reset Period and a Delivery Period Implied Rate
  - "Reset Period Implied Rate" means, for any Reset Period other than the Initial Reset Period, a fixed rate offered by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period at which MSES or Guarantor determines (in its sole discretion) that it would be able to acquire, as of the date of determination, funding from other sources comparable to the funding provided by the Prepaid Agreement as of the date of determination. In determining such a rate, the Guarantor and MSES may consider all relevant factors, including (x) the nature of the source of funding provided by the Prepaid Agreement, including any applicable regulatory or capital charges, (y) the tenor and possibility of early termination of the Prepaid Agreement, and (z) any other unique attributes of the Prepaid Agreement funding relative to other sources available to the Guarantor.
  - "Delivery Period Implied Rate" means, for any remaining portion of the Delivery Period that is not covered by a Reset Period, a fixed rate determined by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period which MSES or Guarantor determines (in its sole discretion) represents an appropriate taxable market discount rate as of the Bond Pricing Date.

- Step 4: Determine the "New Remaining Delivery Cost"
  - MSES will determine the "Remaining Delivery Cost" for each month of the Delivery Period after the Old Reset Period. The Remaining Delivery Cost for the first month of the New Reset Period is the "New Remaining Delivery Cost".

- "Remaining Delivery Cost" means, for the first month of any New Reset Period (the "Determination Month"), an amount calculated by MSES equal to the net present value of a stream of monthly payments equal to the Monthly Contract Quantities multiplied by the [Fixed Price (as defined in the Prepaid Agreement)] for the remainder of the Delivery Period (including such Determination Month), discounted at the Reset Period Implied Rate for the New Reset Period and the Delivery Period Implied Rate for the remainder of the Delivery Period after the New Reset Period.

- Step 5: Additional Reduction Amount or changing Monthly Contract Quantities
  - If the Prior Remaining Energy Value is less than the New Remaining Delivery Cost:
    - If the Reset Period will go to the end of the Delivery Period, MSES will reduce the Monthly Contract Quantities to zero in as many months as necessary at the end of the Delivery Period (and, to the extent necessary, reduce the Monthly Contract Quantities in the last remaining month of the Reset Period to a quantity greater than zero) such that the Prior Remaining Energy Value is equal to the New Remaining Delivery Cost.
    - If the Reset Period will end prior to the end of the Delivery Period, MSES in its sole discretion may reduce the Monthly Contract Quantities as provided above.
  - If the Prior Remaining Energy Value is greater than the New Remaining Delivery Cost:
    - Subject to the following bullet, MSES will pay to Issuer the amount, if any, by which (A) the Prior Remaining Energy Value exceeds (B) the New Remaining Delivery Cost (the "Additional Reduction Amount") on the first day of the contemplated Interest Rate Period, which payment shall be applied by Issuer to the retirement of Bonds.
    - Notwithstanding the immediately prior bullet, MSES may elect to retain a portion of the Excess Amount if (i) the Reset Period will end prior to the end of the Delivery Period, (ii) such retention does not reduce the Available Discount, and (iii) doing so is consistent with the amortization requirement of the Bonds. If MSES elects to retain a portion of such Excess Amount pursuant to the foregoing proviso, the Additional Reduction Amount shall be the portion of such Excess Amount that MSES elects to pay.
  - Any Additional Reduction Amount or changes in Monthly Contract Quantities will then be included in calculating the New Remaining Delivery Cost. An Additional Reduction Amount will reduce the Prior Remaining Energy Value for this purpose.
  - Once the New Reset Period goes into effect, Attachment 1 hereto will be amended such that the Remaining Energy Value for each month in the New Reset Period and the remainder of the Delivery Period is equal to the

Remaining Delivery Cost for such month as determined under Step 4 and updated under this Step 5.

- Step 6: Determine the Fixed Rate for the Bonds for the term of such contemplated Interest Rate Period
    - The remarketing agent or underwriter of the Bonds for such contemplated Interest Rate Period will specify the Fixed Rate.
    - "Fixed Rate" means, for any New Reset Period, the fixed rate or rates of interest payable by Issuer with respect to a Series of Bonds or, in the case of a [Series of Variable Rate Bonds (as defined in the Indenture)], the fixed rate payable by Issuer under the related fixed rate swap transaction, which Fixed Rates will be determined on the Bond Pricing Date at a rate sufficient to enable all the Bonds to be sold or remarketed on such Bond Pricing Date in accordance with the Indenture (which sale price may include a premium or discount to par), as determined based on market information then available.

- Step 7: Determine Monthly Discount Portion of Available Discount
    - MSES will determine the Monthly Discount portion of the Available Discount for the Reset Period based on the expected differences between monthly revenues and monthly debt service and other obligations of the [Energy Project (as defined in the Indenture)].

- Step 8: Determine Annual Refund Portion of Available Discount
    - MSES and Issuer shall mutually agree upon the projected [Annual Refund] (as defined in the Power Supply Contracts) for the Reset Period, which shall be determined consistent with [Section 4.5 of the Power Supply Contracts] and shall be the remaining portion of the Available Discount.

Attachment 1 to Appendix A

Remaining Energy Values

(To be attached.)

PRELIMINARY OFFICIAL STATEMENT DATED _____, 2021

NEW ISSUE - BOOK-ENTRY ONLY **RATING: (SEE "RATING" HEREIN)**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds. See "TAX MATTERS" herein.

[CCCFA LOGO]

$_____*

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS [(PROJECT NO. 2)

$_____	**$_____**
SERIES 2021B-1	**SERIES 2021B-2**
(FIXED RATE)	**(SIFMA 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 2021B (the "*Bonds*"), under a Trust Indenture between CCCFA and [_____], as Trustee. The Bonds will be issued in book-entry form through the facilities of The Depository Trust Company. Purchases of the Bonds will be made in book-entry form through DTC participants in denominations of $5,000 or any multiple thereof. Payments of principal 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 [_____], 20[__] (the "*Initial Interest Rate Period*"), the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period and the Series 2021B-2 Bonds will bear interest in a SIFMA Index Rate Period, all as shown on the inside cover page and as described herein. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds is payable semiannually on each [_____] 1 and [_____] 1, commencing [_____] 1, 20[__] and interest on the Series 2021B-2 Bonds is payable on the first Business Day of each month, commencing on the first Business Day of [_____] 2021. The Bonds are subject to optional and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds of each Series maturing on [_____] 1, 20[__] are subject to mandatory tender for purchase on [_____], 20[__] (the "*Mandatory Purchase Date*").

Proceeds of the Bonds will be used to prepay the costs of the acquisition of EPS Compliant Energy to be delivered over approximately 30 years under a Prepaid Energy Sales Agreement (the "*Prepaid Energy Sales Agreement*"), between Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("*MSES*" or the "*Energy Supplier*") and CCCFA. "*EPS Compliant Energy*" means three-phase, 60-cycle alternating current electric energy ("*Energy*") that a Project Participant (hereinafter defined) can contract for and purchase in compliance with the California's Emissions Performance Standards ("*EPS*"), as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law, that are applicable to such Project Participant Pursuant to the Prepaid Energy Sales Agreement, MSES is obligated to deliver specified quantities of EPS Compliant Energy to CCCFA (the "*Prepaid Energy*"), 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 Participants and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, are unconditionally guaranteed by Morgan Stanley, a Delaware corporation ("*Morgan Stanley*").

CCCFA will sell all of the Prepaid Energy acquired under the Prepaid Energy Sales Agreement to East Bay Community Energy Authority ("*EBCE*") and Silicon Valley Clean Energy Authority ("*SVCE*" and, together with EBCE, the "*Project Participants*") under separate Power Supply Contracts (each a "*Power Supply Contract*" and collectively the "*Power Supply Contracts*"). Under the terms of the Prepaid Energy Sales Agreement and the Power Supply Contracts, each Project Participant may assign its rights to the delivery of EPS Compliant Energy under existing and future power purchase agreements to Morgan Stanley Capital Group, Inc. ("*MSCG*") for ultimate delivery of such EPS Compliant Energy from such agreements to such Project Participant. Each Project Participant has entered into a limited assignment agreement relating to specific power purchase agreement(s) as of the Date of Delivery.

THE PAYMENT OF THE BONDS IS NOT GUARANTEED BY THE ENERGY SUPPLIER, MSCG, MORGAN STANLEY, THE UNDERWRITER, CCCFA OR ITS MEMBERS, OR THE PROJECT PARTICIPANTS. THE BONDS ARE NOT AN OBLIGATION OF ANY STATE OR POLITICAL SUBDIVISION, THE MEMBERS OF CCCFA OR THE PROJECT PARTICIPANTS, 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 AND LIMITED OBLIGATIONS OF CCCFA, PAYABLE SOLELY FROM THE TRUST ESTATE, AS AND TO THE EXTENT DESCRIBED HEREIN.

This Official Statement describes the Bonds only during the Initial Interest Rate Period and must not be relied upon if the Bonds are converted to any other interest rate period. The purchase and ownership of the Bonds involve investment risk and may not be suitable for all investors. This cover page is not intended to be a summary of the terms of or the security for the Bonds. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision with respect to the Bonds, giving particular attention to the matters discussed under "INVESTMENT CONSIDERATIONS" herein.

* Preliminary, subject to change.

The Bonds are offered, when, as and if issued by CCCFA and accepted by the Underwriter, subject to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CCCFA by Orrick, Herrington & Sutcliffe LLP; for the Project Participants by Chapman and Cutler LLP; for the Energy Supplier by Haynes and Boone, LLP; and for the Underwriter by Nixon Peabody LLP. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about [_____], 2021.

Morgan Stanley

This Official Statement is dated April 20, 2021.

**$_____*
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS [PROJECT NO. 2)]**

MATURITY DATES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NUMBERS[1]

**$_____ SERIES 2021B-1 BONDS
(FIXED RATE)**

$_____ SERIAL BONDS

MATURITY _____ 1[2]	PRINCIPAL AMOUNT	INTEREST RATE	YIELD	CUSIP

$_____ _____% Term Bond due _____ 1, 20__[2], Yield: ____%, CUSIP _____

**$_____ SERIES 2021B-2 BONDS
(SIFMA INDEX RATE)**

MATURITY DATE	INDEX	APPLICABLE SPREAD[3]	CUSIP(1)
_____[2]	SIFMA Index	__ basis points	_____

* 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, 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 pf each Series maturing on _____ 1, 20__ are required to be tendered for purchase on _____ 1, 20__.

3 With respect to the Series 2021B-2 Bonds, the Applicable Spread means the margin added to the SIFMA Municipal Swap Index to determine the SIFMA Index Rate. The Applicable Spread will remain constant for the duration of the initial SIFMA Index Rate Period. See "THE BONDS – Series 2021B-2 Bonds" herein.

The information contained in this Official Statement has been obtained from CCCFA, the Project Participants, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparties, DTC and other sources believed to be reliable. This Official Statement is submitted in connection with the sale of the securities described herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement speaks only as of its date and the information contained in this Official Statement is subject to change without notice and neither the delivery of this Official Statement nor any sale made by means of it shall, under any circumstances, create any implication that there have not been changes in the affairs of any party since the date of this Official Statement.

No broker, dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such information or representations must not be relied upon as having been authorized by CCCFA or the Underwriter. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

The Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state, municipal or other government entity or agency has or will have passed upon the adequacy of this Official Statement or, except for CCCFA, approved the Bonds for sale.

In making an investment decision, investors must rely on their own examination of the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. No commission or authority has confirmed the accuracy or determined the adequacy of this document.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE MARKET PRICES OF THE BONDS. SUCH TRANSACTIONS, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12 of the United States Securities and Exchange Commission.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used, such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. CCCFA does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

1125 TAMALPAIS AVENUE
SAN RAFAEL, CA 94901
(___) ___-____

BOARD OF DIRECTORS

Nick Chaset, Chair

Girish Balachandran, Vice Chair

Garth Salisbury, Member

Tom Habashi, Member

MANAGEMENT

Garth Salisbury, Treasurer-Controller

Michael Callahan, General Counsel

MEMBERS

Marin Clean Energy

Central Coast Community Energy

East Bay Community Energy Authority

Silicon Valley Clean Energy Authority

PROJECT PARTICIPANTS

East Bay Community Energy Authority

Silicon Valley Clean Energy Authority

BOND COUNSEL

ORRICK HERRINGTON & SUTCLIFFE LLP

PROJECT PARTICIPANTS' COUNSEL

CHAPMAN AND CUTLER LLP

TRUSTEE

[_____]

FINANCIAL ADVISOR

PUBLIC FINANCIAL MANAGEMENT, INC.

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OFFICIAL STATEMENT

$[_____]*
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
CLEAN ENERGY PROJECT REVENUE BONDS
SERIES 2021B

INTRODUCTION

This Official Statement, which includes the cover page and appendices attached hereto, contains information concerning (a) California Community Choice Financing Authority ("*CCCFA*"), (b) CCCFA's Clean Energy Project Revenue Bonds, Series 2021B (the "*Bonds*"), being issued in the aggregate principal amount of $_____* and (c) the Clean Energy Project (defined below) being financed with proceeds of the Bonds. Capitalized terms used herein have the meanings shown in APPENDIX B.

California Community Choice Financing Authority

California Community Choice Financing Authority is a joint powers agency formed by the Project Participants, Marin Clean Energy, and Central Coast Community Energy, each a community choice aggregator organized and existing under the laws of the State of California (the "*State*"). CCCFA is organized and existing pursuant to the laws of the State with the power to issue the Bonds and enter into the transaction documents described herein. CCCFA is authorized to undertake all actions permitted by Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the "*Act*"), including the purchase of the Energy in connection with the Clean Energy Project, and the sale thereof to the Project Participants. See "CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY" and "COMMUNITY CHOICE AGGREGATORS" herein.

The Bonds

The Bonds will be issued in two separate Series:

(a) $_____ Clean Energy Project Revenue Bonds [(Project No. 2)], Series 2021B-1 (Fixed Rate) (the "*Series 2021B-1 Bonds*"), and

(b) $_____ Clean Energy Project Revenue Bonds [(Project No. 2)], Series 2021B-2 (SIFMA Index Rate) (the "*Series 2021B-2 Bonds*").

The Series 2021B-2 Bonds are sometimes referred to herein as the "*Index Rate Bonds.*"

From their Initial Issue Date to and including _____* (the "*Initial Interest Rate Period*"):

(a) the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period, with interest payable semiannually on each _____ 1 and _____ 1, commencing _____1, 2021*, and

* Preliminary; subject to change.

(b) the Series 2021B-2 Bonds will bear interest at the SIFMA Index Rate in a SIFMA Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of _____ 2021*,

all as shown on the inside cover page and as described herein. See "THE BONDS."

The Bonds are subject to optional redemption and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds maturing on_____ are required to be tendered for purchase on _____* (the *"Mandatory Purchase Date"*), which is the day following the end of the Initial Interest Rate Period. The Purchase Price of Bonds on the Mandatory Purchase Date is equal to the principal amount thereof and is payable in immediately available funds. Under the Indenture, a "Failed Remarketing" will occur if (a) there is a failure on the Mandatory Purchase Date to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem the Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) either (i) on the last day of the second calendar month preceding the Mandatory Purchase Date (i.e., the last day of the Initial Reset Period described below), CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) the conditions described in (b)(i) are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered into the Trust Estate by 12:00 noon, New York City time, on the fifth business day preceding the Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. See "THE BONDS—Redemption" and "—Tender—*Mandatory Tender*."

Security for the Bonds

The Bonds are issued pursuant to the authority contained in the Act and are issued and secured under a Trust Indenture, to be dated as of the first day of the month in which the Bonds are issued (the *"Indenture"*), between CCCFA and [_____], as trustee (the *"Trustee"*). The Bonds are special and limited obligations of CCCFA, are payable solely from and secured solely by the Trust Estate pledged by the Indenture and are expected to be paid from the Revenues of the Clean Energy Project.

The Bonds and the Interest Rate Swap are secured by a pledge of and lien on the Trust Estate established by the Indenture, which (among other things) includes CCCFA's rights under the Powe Supply Contracts, the Revenues, any Termination Payment payable by the Energy Supplier under the Prepaid Energy sales Agreement, CCCFA's rights under the Receivables Purchase Provisions and the Pledged Funds. The pledge of and lien on the Trust Estate in favor of the Bonds is subject to certain provisions of the Indenture. The Bonds are expected to be paid from the Revenues which (among other things) include the revenues received by CCCFA from the sale of Prepaid Energy under the Power Supply Contracts, Commodity Swap Receipts received under the CCCFA Commodity Swap and interest earnings on certain of the Funds and Accounts established by the Indenture. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Clean Energy Project. The Indenture includes provisions for the application of various other amounts under Clean Energy Project that do not constitute Revenues.

* Preliminary; subject to change.

Among other funds and accounts, the Indenture establishes a Revenue Fund, an Operating Fund, a Debt Service Account in the Debt Service Fund and a Commodity Swap Payment Fund and establishes the funding requirements therefor. Scheduled Debt Service Deposits are required to made into the Debt Service Account and will be invested pursuant to the Debt Service Account Investment Agreement described herein. See "SECURITY FOR THE BONDS—Investment of Funds."

The amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Purchase Price or the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that MSES, or in the event of nonpayment by MSES, payment by Morgan Stanley pursuant to the Morgan Stanley Guarantees, and the Investment Agreement Provider pay and perform their respective contract obligations when due. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture. See "INVESTMENT CONSIDERATIONS" herein.

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS OF CCCFA, THE STATE, ANY POLITICAL SUBDIVISION, MUNICIPALITY, CITY OR TOWN OF THE STATE, OR ANY PROJECT PARTICIPANT. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY A LIEN ON THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER. See "SECURITY FOR THE BONDS."

The Clean Energy Project

CCCFA is issuing the Bonds to finance the cost of acquisition of an approximately 30-year supply of EPS Compliant Energy (the "*Prepaid Energy*") under a Prepaid Energy Sales Agreement between CCCFA and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the *"Energy Supplier"* or *"MSES"*). The term "*EPS Compliant Energy*" means three-phase, 60-cycle alternating current electric energy ("*Energy*") that a Project Participant can contract for and purchase in compliance with the California's Emissions Performance Standards (*"EPS"*), as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law, that are applicable to such Project Participant. Pursuant to the Prepaid Energy Sales Agreement, the Energy Supplier is obligated to deliver specified quantities of Prepaid Energy to CCCFA each month (the *"Prepaid Quantities"*), make certain payments for any Prepaid Quantities not delivered, remarket Prepaid Quantities not taken by the Project Participants and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, are unconditionally guaranteed by Morgan Stanley (*"Morgan Stanley"*). For a summary of certain terms and provisions of the Prepaid Energy Sales Agreement, see "THE PREPAID ENERGY SALES AGREEMENT."

CCCFA has entered into Power Supply Contracts (each a *"Power Supply Contract"* and collectively the *"Power Supply Contracts"*) for the sale of the Prepaid Energy with East Bay Community Energy Authority (*"EBCE"*) and Silicon Valley Clean Energy Authority (*"SVCE"*), each a joint powers authority and a community choice aggregator duly organized and existing under the laws of the State of California (each a *"Project Participant"* and collectively the *"Project Participants"*). During the Delivery

Period, each Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. Under the terms of the Prepaid Energy Sales Agreement and each Power Supply Contract, each Project Participant may assign its right to receive quantities of EPS Compliant Energy equal to the Prepaid Quantities under existing and future power purchase agreements (*"Assigned Quantities"*) to Morgan Stanley Capital Group, Inc. (*"MSCG"*) for ultimate redelivery of such Assigned Quantities, together with Green Attributes (as defined in APPENDIX B hereto), renewable energy credits ("*RECs*"), capacity, or other related products (collectively, *"Assigned Product"*) from such agreements to such Project Participant. Each Project Participant has entered into a limited assignment agreement relating to [a] specific power purchase agreement(s) as of the Date of Delivery. For a summary of certain terms and provisions of the Power Sales Contracts, see "THE POWER SALES CONTRACTS." See APPENDIX A for certain operating and financial information with respect to the Project Participants.

The acquisition of the approximately thirty-year supply of Prepaid Energy by CCCFA under the Prepaid Energy Sales Agreement and the sale of such Prepaid Energy to the Project Participants under the Power Supply Contracts is referred to herein as the *"Clean Energy Project."*

Assignment of Power Purchase Agreements by the Project Participants

Right to Assign Existing and Future Power Purchase Agreements. The Clean Energy Project is structured to assist the Project Participants to procure a long-term supply of EPS Compliant Energy at attractive prices. In order to do so, the Clean Energy Project includes a feature whereby a Project Participant may assign a portion of its rights and obligations (the "*Assigned Rights and Obligations*") under existing and future power purchase agreements ("*PPAs*") to MSCG to meet the Energy Supplier's obligations to deliver Prepaid Energy under the Prepaid Energy Sales Agreement (*"Assigned Prepaid Energy"*). CCCFA will then deliver such Assigned Energy to such Project Participant under its Power Supply Contract. Concurrent with the execution of the Prepaid Energy Sales Agreement and the Power Supply Contracts, each Project Participant has entered into a limited assignment agreement (each, an "*Assignment Agreement*") relating to one or more specific PPAs (each an "*Initially Assigned PPAs*" and collectively the *"Initially Assigned PPAs"*) among such Project Participant, MSCG and the seller under the applicable PPA (a *"PPA Seller"*) to assign the Energy from the Assigned Rights and Obligations (the *"Assigned Energy"*) to MSCG beginning [_____], 20[22]. MSCG will redeliver the Assigned Energy to the Energy Supplier pursuant to an Energy Management Agreement between them.

In the event of termination of the Prepaid Energy Sales Agreement, the rights, title and interest under the Assigned PPAs will revert back to the Project Participants, who may continue to receive the EPS Compliant Energy delivered under such agreements at the price payable under the applicable Assigned PPA. In the event of a termination of an Assignment Agreement and the reversion of the related Assigned Rights and Obligations under an Assigned PPA to a Project Participant, no termination payment other than payment for delivered Prepaid Energy will be required to be made by CCCFA, the Energy Supplier or MSCG.

Summary of Transaction Documents

The Prepaid Energy Sales Agreement

General. During the Delivery Period, the Prepaid Energy Sales Agreement provides for the monthly delivery of the Prepaid Quantities of EPS Compliant Energy. To the extent the quantity of

Assigned Energy delivered under the Initially Assigned PPAs or any future Assigned PPA for any month is less than Prepaid Quantity for such month, and the Energy Supplier is otherwise unable to deliver EPS Compliant Energy in respect of such Prepaid Quantity, the Energy Supplier is required to deliver Firm (LD) Energy (*i.e.*, Energy that is required to be delivered without liability only to the extent that, and for the period during which, such performance is prevented by *Force Majeure*) in respect of such quantity (*"Base Energy"*). Neither CCCFA nor the Energy Supplier will have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Energy, as further discussed under "THE PREPAID ENERGY SALES AGREEMENT — *Assignment of Power Purchase Agreements*" herein. The Energy Supplier is obligated to remarket Base Energy under the Prepaid Energy Sales Agreement and remit the proceeds thereof to CCCFA. The Energy Supplier is also obligated to make payments to CCCFA for Base Energy not delivered under the Prepaid Energy Sales Agreement , including for *Force Majeure* events.

Assignment of Power Purchase Agreements. Each of the Project Participants has assigned its Assigned Rights and Obligations under the Initially Assigned PPAs to MSCG (the "*Initial Assigned Rights and Obligations*"), as described above. In the event of any expiration, termination or anticipated termination of the Initial Assigned Rights and Obligations, each Project Participant is required to use commercially reasonable efforts to assign replacement Assigned Rights and Obligations to MCG for delivery of Assigned Energy equal to the Prepaid Quantities ("*Replacement Assigned Rights and Obligations*"). **Assigned Rights and Obligations are expected to be in place for the entirety of the Initial Reset Period, and Base Energy is not expected to be delivered during the Initial Reset Period.**

Energy Remarketing. The Energy Supplier must remarket any Base Energy required to be delivered under the Prepaid Energy Sales Agreement. In the event that the Energy Supplier is unable to remarket such Base Energy, it has agreed to purchase such Base Energy for its own account. The Energy Supplier is required to (a) enter all remarketing sales or purchases of Base Energy on a ledger system that tracks compliance with the requirements of the U.S. Treasury Regulations applicable to tax-exempt bonds that finance Prepaid Energy supplies, and (b) remediate any non-complying sales (i.e., non-qualifying use sales and private business use sales) through "qualifying use" sales within two years.

Early Termination. Various termination events are specified in the Prepaid Energy Sales Agreement. Upon the occurrence of certain of these events, the Prepaid Energy Sales Agreement may be terminated by CCCFA or MSES, and upon the occurrence of certain other events including a Failed Remarketing, the Prepaid Energy Sales Agreement will terminate automatically. If the Prepaid Energy Sales Agreement is terminated, MSES will be required to pay a scheduled termination payment (the *"Termination Payment"*) to CCCFA. Any termination of the Prepaid Energy Sales Agreement will result in extraordinary mandatory redemption of the Bonds. The amount of the Termination Payment declines over time as MSES performs its Energy delivery obligations under the Prepaid Energy Sales Agreement.

The amount of the Termination Payment, together with the amounts required to be on deposit in certain funds and accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that the Energy Supplier pays and performs its contract obligations when due, or in the event of nonpayment by the Energy Supplier, payment by Morgan Stanley under the Morgan Stanley Guarantees. A payment shortfall from any one of these entities could result in a payment shortfall to Bondholders.

See "THE PREPAID ENERGY SALES AGREEMENT," and "THE BONDS — Redemption — *Extraordinary Mandatory Redemption.*" A schedule of the monthly Termination Payment during the initial

Reset Period under the Prepaid Energy Sales Agreement is attached as APPENDIX H. Upon an Early Termination of the Prepaid Energy Sales Agreement, the Assignment Agreements shall terminate, with no further payment due under the Trust Estate with respect to the Assigned PPAs.

The Receivables Purchase Provisions

The Prepaid Energy Sales Agreement contains provisions (the *"Receivables Purchase Provisions"*) designed to mitigate the risk of non-payment by the Project Participants under the Power Supply Contracts. Upon a payment default by either of the Project Participants, the Receivables Purchase Provisions require CCCFA to put, and require MSES, as Receivables Purchaser, to purchase the amount owed by the defaulting Project Participant (the *"Put Receivables"*) with a face value up to the Maximum Monthly Amount with respect to each Project Participant. The *"Maximum Monthly Amount"* with respect to each Project Participant is sufficient to pay such Project Participant's proportional share of (a) the greatest Scheduled Debt Service Deposits that CCCFA is required to make in any two consecutive months and (b) the projected maximum amount of Commodity Swap Payments that CCCFA would be required to pay in any two consecutive months, assuming a Contract Price under the Power Supply Contracts of $___ per MWh. Amounts received by the Trustee from the sale of Put Receivables will be deposited into the Revenue Fund and applied in accordance with the priorities established under the Indenture. See "SECURITY FOR THE BONDS—Flow of Funds."

The Receivables Purchase Provisions also grant the Energy Supplier the right, but not the obligation, to purchase from CCCFA certain additional receivables relating to non-payment by the Project Participants in an amount sufficient to cause the amounts on deposit in the Commodity Swap Payment Fund to be sufficient to make the next succeeding payment due by CCCFA under the CCCFA Commodity Swap (the *"Call Receivables"*).

See "THE PREPAID ENERGY SALES AGREEMENT—Receivables Purchase Provisions."

Morgan Stanley Guarantees

The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under a guarantee agreement (the "*Morgan Stanley Guarantee"*). The payment obligations of MSES under the the Energy Supplier Commodity Swap are unconditionally guaranteed by Morgan Stanley under a separate guarantee agreement (the *"Morgan Stanley Commodity Swap Guarantee"*). The Morgan Stanley Guarantee and the Morgan Stanley Commodity Swap Guarantee are referred to collectively herein as the *"Morgan Stanley Guarantees."* See "THE CLEAN ENERGY PROJECT—Morgan Stanley Guarantees" and "THE PREPAID ENERGY SALES AGREEMENT—Security."

The Power Supply Contracts

The Power Supply Contracts provide for the sale to the Project Participants of the Prepaid Energy to be delivered to CCCFA over the term of the Prepaid Energy Sales Agreement. Such Prepaid Energy will be comprised of the Assigned Quantities under Assigned PPAs and, to the extent such Assigned Quantities are less than the Prepaid Quantities for any month and MSES is otherwise unable to deliver make-up quantities of EPS Compliant Energy, Base Energy. Under the Power Supply Contracts, CCCFA has agreed

to deliver, and the Project Participants have agreed to purchase, such Assigned Quantities and to provide for the remarketing of any Base Energy during the Delivery Period.

The payments required to be made under the Power Supply Contracts constitute the primary and expected source of the Revenues pledged to the payment of the Bonds. The obligations of the Project Participants under the Power Supply Contracts are payable solely from revenues of the Project Participants derived from their respective community choice aggregator power supply operations.

If the actual quantity of Assigned Energy delivered is less than scheduled and the Energy Supplier is unable to deliver EPS Compliant Energy from other sources, the Energy Supplier is obligated to deliver Base Energy. Base Energy is required to be remarketed under the Prepaid Energy Sales Agreement, subject to specific requirements. In the event that the Energy Supplier is unable to remarket any such Base Energy, the Energy Supplier has agreed to purchase such Base Energy for its own account.

Re-Pricing Agreement

On the Initial Issue Date of the Bonds, CCCFA and the Energy Supplier will enter into a Re-Pricing Agreement (the *"Re-Pricing Agreement"*), which provides for (a) the determination of Energy Delivery periods subsequent to the initial Delivery Period to correspond to the related Interest Rate Periods on the Bonds (*"Reset Periods"*) and (b) the determination of the amount of the discount (in US Dollars per MWh) to the Index Price that will be available for such Reset Period (the *"Available Discount"*) for sales to the Project Participants under the Power Supply Contracts during each Reset Period.

The initial Delivery Period under the Prepaid Energy Sales Agreement begins on the first day of _____ 20__ and ends on the last day of _____ 20__, and the first Reset Period is expected to begin on the first day of _____ 20__. In the event the Available Discount for any Reset Period is less than the Minimum Discount specified in the Power Supply Contracts, each Project Participant may elect not to take Energy during the Reset Period and to have the Energy 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. Upon a Remarketing Election by a Project Participant, any Assignment Agreement with such Project Participant will terminate and the Assigned Rights and Obligations under the applicable Assigned PPA will revert to the related Project Participant.

In the event that both Project Participants make Remarketing Elections with respect to any Reset Period, the Energy Supplier will have the right, but not the obligation, to terminate the Prepaid Energy Sales Agreement. See "THE RE-PRICING AGREEMENT" and "THE PREPAID ENERGY SALES AGREEMENT — Remarketing" and "— Early Termination."

Interest Rate Swap

With respect to any Index Rate Bonds that are issued, CCCFA will enter into an interest rate swap agreement (the *"Interest Rate Swap"*) with MSES, as Interest Rate Swap Counterparty, in order to hedge its exposure to interest rate fluctuations on the Index Rate Bonds and match its payment obligations on the

Index Rate Bonds with the expected Revenues of the Clean Energy Project. Under the Interest Rate Swap, CCCFA will pay amounts corresponding to the principal amount of the Index Rate Bonds at a fixed interest rate, and will receive from MSES amounts corresponding to the principal amount of the Index Rate Bonds at a floating rate equal to the interest rates on the Index Rate Bonds. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period. See "THE INTEREST RATE SWAP."

Commodity Swaps

During the Initial EPS Energy Period, the Contract Price for Prepaid Energy delivered to the Project Participants will be a fixed price, and therefore payments of fixed and floating amounts under the Commodity Swaps described herein are not required to be made during the Initial EPS Energy Period. Thereafter, the Contract Price will revert to a floating price and such payments will be required to be made.

The swap counterparty is [Royal Bank of Canada]. See "THE COMMODITY SWAPS" and "THE COMMODITY SWAP COUNTERPARTY."

The Energy Supplier, MSCG and Morgan Stanley

The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The Federal Energy Regulatory Commission (the *"FERC"*) has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services. Like all other Energy marketers, the Energy Supplier has blanket authorization to sell wholesale Energy at market-based rates. The Energy Supplier is not registered with the Commodity Futures Trading Commission (the *"CFTC"*) in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the Energy Supplier Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees.

MSCG is a direct, wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which is a direct, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC.

Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides its products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the United States, and its principal offices in London, Tokyo, Hong Kong and other world financial centers.

See "THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY," and "THE PREPAID ENERGY SALES AGREEMENT—Security."

Certain Relationships

MSES, which is the Energy Supplier and the Receivables Purchaser, and MSCG, which is assignee under the Assignment Agreements are indirect, wholly-owned subsidiaries of Morgan Stanley. The payment obligations of MSES under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap and the Interest Rate Swap, are unconditionally guaranteed by Morgan Stanley.

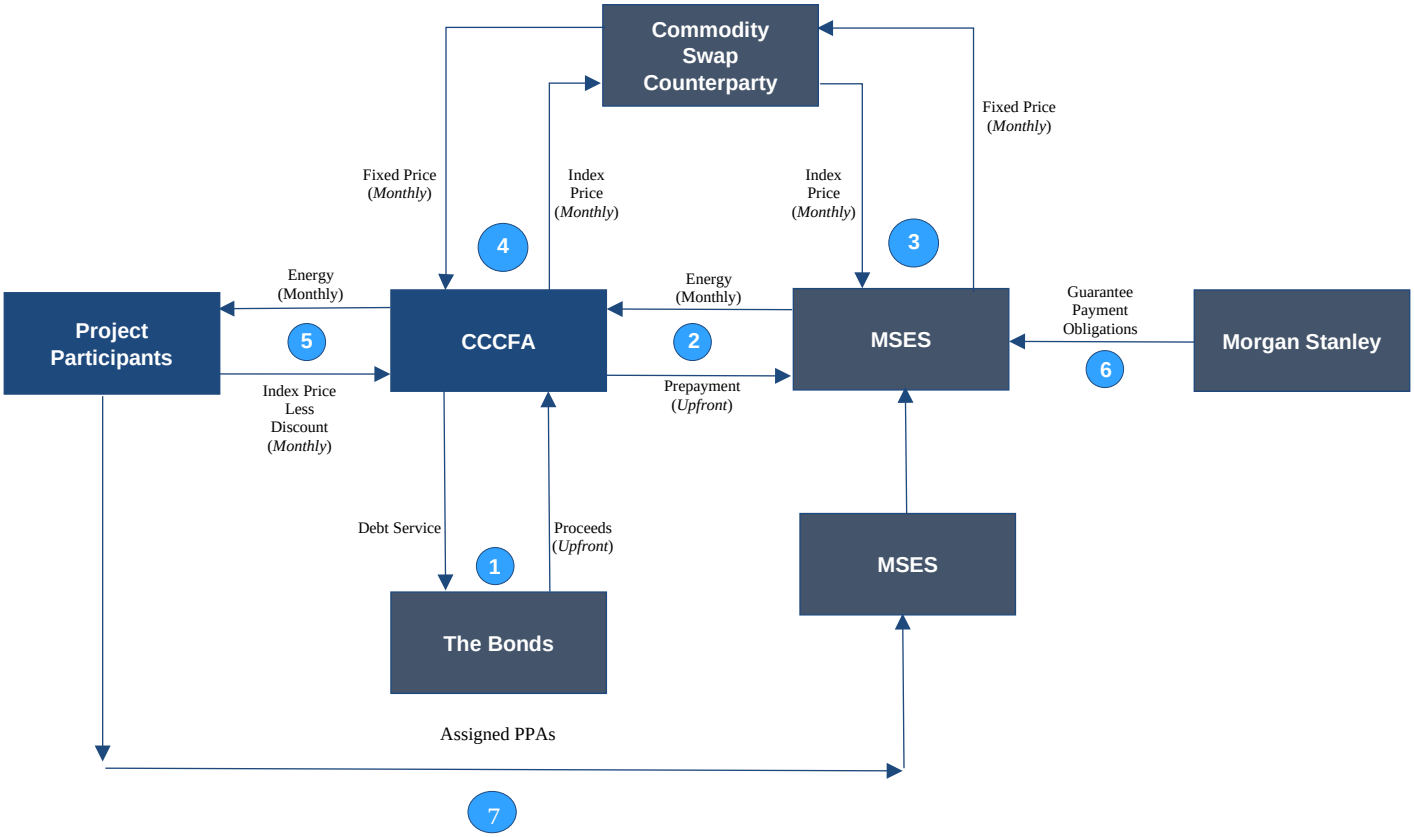
Morgan Stanley & Co. LLC (*"MS&Co."*) is serving as the Underwriter of the Bonds. MS&Co. is a Delaware corporation (incorporated in 1969) and is a wholly-owned subsidiary of Morgan Stanley.

The relationships described above could create one or more conflicts of interest or the appearance of such conflicts.

This Official Statement includes information regarding and descriptions of CCCFA, the Clean Energy Project, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparties, the Project Participants and the Bonds, and summaries of certain provisions of the Indenture, the Power Supply Contracts, the Prepaid Energy Sales Agreement, the Commodity Swaps, the Receivables Purchase Provisions, the Re-Pricing Agreement, the Investment Agreements, the Interest Rate Swap and the Custodial Agreements referred to herein. Such descriptions and summaries do not purport to be complete or definitive, and such summaries are qualified by reference to such documents. Certain of these documents are available to prospective investors during the initial offering period of the Bonds and thereafter to Bondholders, in each case upon request to CCCFA. Descriptions of the Indenture, the Bonds, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Commodity Swaps, the Investment Agreements, the Interest Rate Swap, the Custodial Agreements, the Receivables Purchase Provisions and the Re-Pricing Agreement, and are qualified by reference to bankruptcy laws affecting the remedies for the enforcement of the rights and security provided therein and the effect of the exercise of police and regulatory powers by federal and state authorities.

This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after interest on the Bonds is converted to another Interest Rate Period.

CLEAN ENERGY PROJECT TRANSACTION STRUCTURE



Transaction Overview

1. **Bond Issuance:** CCCFA issues the Bonds to fund the prepayment for Energy, pay capitalized interest, and pay costs of issuance. The Bonds will bear interest at fixed interest rates during the Initial Interest Rate Period.

2. **Prepayment:** CCCFA will apply bond proceeds to prepay MSES for 30 years of Energy deliveries. Under the Prepaid Energy Sales Agreement, MSES will be obligated to (a) deliver specified hourly quantities of Energy each month to CCCFA for 30 years; (b) make payments for any [Base Energy of] Energy not delivered based on replacement cost or the index price, whichever is higher; and (c) make a termination payment upon any early termination of the Prepaid Energy Sales Agreement, including upon a Failed Remarketing, as described herein.

3. **MSES Commodity Swap:** MSES enters into a Commodity Swap with the Commodity Swap Counterparty to facilitate MSES's ability to purchase at index prices the specified Energy quantities required to be delivered each month throughout the term of the Prepaid Energy Sales Agreement.

4. **Issuer Commodity Swap:** CCCFA enters into a Commodity Swap with the Commodity Swap Counterparty to facilitate its ability to sell specified Energy quantities required to be delivered to the Project Participants at index prices, creating the economic effect of fixing the discount below the index (market) price at which Energy is sold to the Project Participants. CCCFA Commodity Swap enables CCCFA to sell prepaid quantities to the Project Participants at index prices while ensuring that the net revenues from Project Participant payments and CCCFA Commodity Swap always equal or exceed debt service regardless of the index price of Energy at the time. Quantities, term, and delivery points for CCCFA Commodity Swap mirror those of the MSES Commodity Swap.

5. **Project Participants:** Under the Energy Supply Contract, CCCFA will sell to the Project Participants all of the Energy delivered by MSES on a pay-as-you-go basis at fixed prices less specified discounts determined to ensure that the month's net Energy sale revenues (net of swap payments and receipts) will enable CCCFA to make scheduled deposits to the Debt Service Account.

6. **MS Guarantees:** The payment obligations of MSES under the Prepaid Energy Sales Agreement and the MSES Commodity Swap will be guaranteed by Morgan Stanley.

7. **Assigned PPAs:** Each Project Participant is expected to assign its rights to receive EPS Compliant Energy under existing and future Power Purchase Agreement to MSCG for delivery to MSES in order for MSES to meet its obligation to delivery EPS Compliant Energy to CCCFA under the Prepaid Energy Sales Agreement.

The cumulative effect of the Prepaid Energy Sales Agreement, CCCFA Commodity Swap, the Power Supply Contracts and related documents enables CCCFA to receive dependable Energy supplies at a discount below market prices for sale to the Project Participants. The resulting monthly net revenues, regardless of changes in Energy prices, are expected to be adequate to pay Debt Service requirements on the Bonds and program expenses when due.

INVESTMENT CONSIDERATIONS

The purchase of the Bonds involves certain investment considerations discussed throughout this Official Statement. Prospective purchasers of the Bonds should make a decision to purchase the Bonds only after reviewing the entire Official Statement and making an independent evaluation of the information contained herein. Certain of those investment considerations are summarized below. This summary does not purport to be complete, and the order in which the following investment considerations are presented is not intended to reflect their relative significance.

Special and Limited Obligations

The Bonds are special, limited obligations of CCCFA and are payable solely from and secured solely by the Trust Estate pledged pursuant to the Indenture. The Trust Estate includes only the proceeds, revenues, funds and rights related to the Clean Energy Project, as described under "SECURITY FOR THE BONDS — The Indenture" below and does not include any other revenues or assets of CCCFA. The Bonds are not general obligations of CCCFA, and CCCFA has no taxing power.

Only CCCFA is obligated to pay the Bonds. Neither Project Participant is obligated to make payments in respect of the debt service on the Bonds. The Project Participants are obligated only to purchase and pay for Prepaid Energy tendered for delivery by CCCFA at the Contract Price set forth therein. Neither the Energy Supplier, MSCG nor Morgan Stanley is obligated to make debt service payments on the Bonds, and none of them has guaranteed payment of the Bonds.

Structure of the Clean Energy Project

The Prepaid Energy Sales Agreement, the Power Supply Contracts, the Investment Agreement, the Commodity Swaps, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Energy Supplier, Morgan Stanley, the Investment Agreement Provider and the Project Participants of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are calculated to be sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds. During the Delivery Period that corresponds to the Initial Interest Rate Period for the Bonds, these arrangements include:

- The Energy Supplier is required to deliver Prepaid Energy under the Prepaid Energy Sales Agreement to CCCFA such that CCCFA can meet its obligations to the Project Participants under the Power Supply Contracts. In the event Assigned Quantities equivalent to the Prepaid Quantities are not delivered under the Assigned PPAs, and the Energy Supplier is unable to delivery make-up quantities of EPS Compliant Energy, the Energy Supplier is required to delivery equivalent quantities of Base Energy for remarketing. In the event the Energy Supplier fails to deliver Base Energy for any reason, including *force majeure* events, it is required to pay certain specified amounts to CCCFA.

- Each Project Participant has agreed to pay for Prepaid Energy tendered for delivery under its Power Supply Contract at the Contract Price. In the event a Project Participant fails to pay when due any amounts owed under its Power Supply Contract, CCCFA has covenanted in the Indenture to exercise its right under the Power Supply Contract to suspend further

deliveries of Prepaid Energy to such Project Participant and to give notice to the Energy Supplier to follow the provisions of the Prepaid Energy Sales Agreement with respect to Prepaid Energy for which delivery has been suspended.

- In the event that a Project Participant fails to pay for Prepaid Energy tendered for delivery by CCCFA or fails to pay damages for Prepaid Energy tendered by CCCFA and not taken, the Trustee is obligated to sell and, subject to caps established in the Receivables Purchase Provisions, MSES is obligated to purchase, Put Receivables.

- In the event of a suspension of Prepaid Energy deliveries to a Project Participant, the Energy Supplier will remarket Base Energy pursuant to the Prepaid Energy Sales Agreement. The Prepaid Energy Sales Agreement requires specified payments for all Base Energy remarketed or purchased, less certain applicable fees.

- If a Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian under the terms of the Energy Supplier Custodial Agreement will pay the amount that the Energy Supplier paid under the corresponding Energy Supplier Commodity Swap (or in the event of termination of such Energy Supplier Commodity Swap, the amount that the Energy Supplier paid into the applicable custodial account as if such Energy Supplier Commodity Swap were still in effect), which such amount is held in custody, to CCCFA, and such payment will be treated as a Commodity Swap Receipt.

- If a Termination Event occurs under the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment to CCCFA.

- [_____], as provider of the Debt Service Account Investment Agreement (the *"Investment Agreement Provider"*) is required to make timely payment of scheduled amounts due under the Investment Agreement which, together with other Revenues, provide sufficient monies to CCCFA to pay debt service.

In the event that the Energy Supplier fails to perform its material obligations under the Prepaid Energy Sales Agreement, the Prepaid Energy Sales Agreement will terminate automatically in certain circumstances or CCCFA at its option may terminate the Prepaid Energy Sales Agreement in other circumstances. Upon any termination of the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment. The payment of the Termination Payment is guaranteed by Morgan Stanley under the Morgan Stanley Guarantee. In the event that the Prepaid Energy Sales Agreement is terminated, the Series 2021B-1 Bonds are to be redeemed at their Amortized Value and the Series 2021B-2 Bonds are to be redeemed at 100% of their principal amount (in each case plus accrued interest to the redemption date), regardless of reinvestment rates at the time. See "THE BONDS—Redemption—*Extraordinary Mandatory Redemption.*"

Performance by Others

During the Initial Interest Rate Period, the ability of CCCFA to pay timely the scheduled debt service on the Bonds depends on the timely performance and payment by (a) MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, the Energy Supplier

Commodity Swap and the Interest Rate Swap, (b) Morgan Stanley under the Morgan Stanley Guarantees, (c) the Project Participants under the Power Supply Contracts, and (d) the Investment Agreement Provider under the Investment Agreement. The failure by any one or more of such parties to meet such obligations could materially and adversely affect the ability of CCCFA to pay timely the scheduled debt service on the Bonds, and to meet its other obligations under the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contracts and, if applicable, the CCCFA Commodity Swaps.

The events and conditions that could result in either or both of (a) a default in the payment of Debt Service on the Bonds or (b) a Termination Event under the Prepaid Energy Sales Agreement, which will cause the extraordinary mandatory redemption of the Bonds, include items that may be within or outside the control of CCCFA or the Energy Supplier (or both), such as:

- failure by the Energy Supplier in the timely performance of its obligations under the Prepaid Energy Sales Agreement to deliver Prepaid Energy and to remarket any Base Energy;

- in the event of nonpayment by the Energy Supplier of its obligations under the Prepaid Energy Sales Agreement, the Receivables Purchase Provisions, the Energy Supplier Commodity Swap or the Interest Rate Swap, failure by Morgan Stanley in the timely payment of the guaranteed amounts under the Morgan Stanley Guarantees;

- the prospects and financial and operational performance of the Energy Supplier, MSCG and Morgan Stanley and their continuing ability to meet their respective obligations under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap, the Interest Rate Swap and the Morgan Stanley Guarantees, respectively, for their full terms;

- failure by the Project Participants in the timely performance of their Prepaid Energy purchase obligations under the Power Supply Contracts;

- failure by MSES in the timely performance of its obligation to purchase Put Receivables under the Receivables Purchase Provisions in the event of nonpayment by a Project Participant under a Power Supply Contract;

- in the event that a nonpayment by a Project Participant exceeds the Maximum Monthly Amount with respect to such Project Participant, failure by the Energy Supplier to exercise its option to purchase Call Receivables in an amount sufficient to enable CCCFA to make the next succeeding payment due under the CCCFA Commodity Swap in order to prevent a potential early termination of the CCCFA Commodity Swap;

- failure by the Energy Supplier in the performance of its remarketing obligations with respect to any Base Energy under the Prepaid Energy Sales Agreement, including particularly its continuing ability to remarket Base Energy to Municipal Utilities;

- failure by the Commodity Swap Counterparty in the timely performance of its obligations under the CCCFA Commodity Swap and the Energy Supplier Commodity Swap combined with a failure in the timely performance and enforcement of the Energy Supplier Custodial Agreement;

- failure by the Energy Supplier and CCCFA in the timely performance of their respective obligations under the Energy Supplier Commodity Swap and the CCCFA Commodity Swap;

- the inability of the Energy Supplier and CCCFA to replace timely any Commodity Swap that has been terminated;

- failure by MSES or CCCFA in the timely performance of their respective obligations under the Interest Rate Swap; and

- failure by the Investment Agreement Provider to make timely payment of the required amounts due or payable under the Investment Agreement.

Upon early termination of the Prepaid Energy Sales Agreement, the Energy Supplier will be obligated to pay the scheduled Termination Payment. The scheduled amount of the Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide CCCFA with an amount at least sufficient to redeem all of the Bonds, assuming that the Energy Supplier and the Investment Agreement Provider pay and perform their contract obligations when due.

In the case of a Failed Remarketing and a mandatory redemption of the Bonds on the Mandatory Purchase Date, the amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that the Energy Supplier, and Morgan Stanley as the guarantor of the payment obligations of the Energy Supplier, pay and perform their respective contract obligations when due. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture.

Energy Remarketing

California's Emissions Performance Standard ("*EPS*") regulations, codified as Senate Bill 1368 (2006) ("*SB 1368*") prevents all California utilities, both privately and publicly owned, from signing long-term contracts with a greenhouse gas emissions greater per unit of power than the emissions of greenhouse gases for combined-cycle natural gas baseload generation. For baseload generation procured under contracts, a long-term commitment is a contract of five years or longer. In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations under the Assigned PPAs, each Project Participant may propose to assign Replacement Assigned Rights and Obligations to MSCG for delivery of EPS Compliant Energy to the Energy Supplier. Each of the Project Participants has or expects to have additional power purchase agreements pursuant to which it purchases or expects to purchase EPS Compliant Energy and wherein its rights and obligations thereunder could be assigned to MSCG.

In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, the shortfall quantities will be delivered and remarketed as Base Energy under the Prepaid Energy Sales Agreement. Any such remarketing of Base Energy will be treated as a private-business use sale, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES

is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

If a Project Participant experiences a loss of Energy load such that it has insufficient demand for the Prepaid Quantities, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

In the event of any expiration or termination of an Assigned PPA, the applicable Project Participant is required to use Commercially Reasonable Efforts to enter into a new limited assignment agreement relating to one or more additional PPAs, providing for the assignment of its rights to delivery of quantities of EPS Compliant Energy equivalent to the Prepaid Quantities for the term of such assignment. If no such replacement is available or is not accepted by MSCG, MSES is required to purchase such quantities for its own account, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. If the Project Participant has not made Commercially Reasonable Efforts to replace, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

Base Energy is not expected to be delivered during the Initial Reset Period.

Limitations on Exercise of Remedies

The remedies available to CCCFA under the Prepaid Energy Sales Agreement are limited to those described herein. The remedies available to the Trustee, CCCFA and the Holders of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory provisions and judicial decisions, the remedies provided in the Indenture may not be readily available or may be limited.

Enforceability of Contracts

The enforceability of the various legal agreements relating to the Clean Energy Project may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors or secured parties generally, by the exercise of judicial discretion in accordance with general principles of equity and by principles of equity, public policy and commercial reasonableness. The Prepaid Energy Sales Agreement and other agreements relating to the Clean Energy Project are executory contracts. If CCCFA, the Energy Supplier, Morgan Stanley, a Commodity Swap Counterparty, a Project Participant or any of the parties with which CCCFA has contracted under such agreements (including the Prepaid Energy Sales Agreement) is involved in a bankruptcy proceeding, the relevant agreement could be discharged in return for a claim for damages against the party's estate with uncertain value. In the event that CCCFA is involved in an insolvency proceeding, the exercise of the remedies afforded to the Trustee under the Indenture may be stayed, and the availability of the Revenues necessary for the payment of the Bonds could be materially and adversely affected.

No Established Trading Market

The Bonds constitute a new issue with no established trading market. The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained therein. Although the Underwriter has informed CCCFA that it currently intends to make a market in the Bonds, they are not obligated to do so and may discontinue any such market making at any time without notice. There can be no assurance as to the development or liquidity of any market for the Bonds. If an active public market does not develop, the market price and liquidity of the Bonds may be adversely affected.

Loss of Tax Exemption on the Bonds

As described below, the opinion of Bond Counsel with respect to the exclusion of interest on the Bonds from gross income for federal income tax purposes is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (the *"IRS"*) or the courts, and is not a guarantee of a result.

The Indenture, CCCFA's Tax Agreement with respect to the Bonds, the Prepaid Energy Sales Agreement and the Power Supply Contracts contain various covenants and agreements on the part of CCCFA, the Energy Supplier and the Project Participants that are intended to establish and maintain the tax-exempt status of the Bonds. CCCFA, the Energy Supplier and the Project Participants have each agreed to abide by the various covenants and agreements designed to protect the tax-exempt status of the Bonds. A failure by CCCFA, the Energy Supplier and the Project Participants to comply with such covenants and agreements could, directly or indirectly, adversely affect the tax-exempt status of the Bonds.

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. It cannot be predicted whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, under current procedures the IRS may treat CCCFA as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market value and liquidity of the Bonds until the audit is concluded, regardless of the ultimate outcome.

Any loss of the tax-exempt status of the Bonds could be retroactive to the date of issuance of the Bonds and could cause all of the interest on the Bonds to be includable in gross income for purposes of federal income taxation. *The loss of the tax-exempt status of the Bonds is not a termination event under the Prepaid Energy Sales Agreement and will not result in a mandatory redemption of the Bonds.* See "THE PREPAID ENERGY SALES AGREEMENT " and "TAX MATTERS."

SECURITY FOR THE BONDS

The Indenture

The Bonds are secured under the Indenture solely by a pledge of and lien on the *"Trust Estate,"* which is defined in the Indenture to include (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Power Supply Contracts, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such

Termination Payment (e) all right, title and interest of Issuer in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of CCCFA in, to and under the Morgan Stanley Guarantee, (g) all right, title and interest of CCCFA in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of CCCFA in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

The pledge of and lien on the Trust Estate in favor of the Bonds is subject to (x) the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, including the first charge on the Revenues to pay Operating Expenses of the Project, and (y) a prior lien on and security interest in the Commodity Swap Payment Fund in favor of the Commodity Swap Counterparty.

The term *"Revenues"* is defined in the Indenture to include (a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by CCCFA from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by CCCFA under the Power Supply Contracts and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale, transportation and/or transmission of Energy or otherwise with respect to Clean Energy Project, (b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund; and (c) any Commodity Swap Receipts received by the Trustee on behalf of CCCFA; *provided that*, the term "Revenues" shall not include: (i) any Termination Payment pursuant to the Prepaid Energy Sales Agreement; (ii) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to the Indenture; (iii) amounts paid by the Project Participants in respect of the Project Administration Fee; (iv) any Assignment Payment received from the Energy Supplier; (v) Interest Rate Swap Receipts (which are to be deposited directly into the Debt Service Account); and (vi) payments received from the Energy Supplier pursuant to the Receivables Purchase Provisions in respect of Call Receivables. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Project. See "Flow of Funds" below.

The term "*Operating Expenses*" is defined in the Indenture to mean, to the extent properly allocable to the Clean Energy Project: (a) CCCFA's expenses for operation of the Clean Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Prepaid Energy Sales Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of CCCFA's obligations under the Power Supply Contracts; (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of the Indenture (other than Debt Service on the Bonds) or by law or required to be incurred under or in connection with the performance of CCCFA's obligations

under the Power Supply Contracts; (c) fees payable by CCCFA with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses incurred by CCCFA, including but not limited to those relating to the administration of the Trust Estate and compliance by CCCFA with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by CCCFA, including, without limitation, directors and officers liability insurance. Commodity Swap Payments, litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA OR ITS MEMBERS, THE STATE, ANY POLITICAL SUBDIVISION OF THE STATE OR THE PROJECT PARTICIPANTS. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY A LIEN ON THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER.

THE OBLIGATIONS OF THE PROJECT PARTICIPANTS TO MAKE PAYMENTS TO CCCFA UNDER THE POWER SUPPLY CONTRACTS ARE NOT, NOR SHALL THEY BE CONSTRUED AS, A GUARANTY OR ENDORSEMENT OF OR A SURETY FOR, THE BONDS. SUCH OBLIGATIONS OF THE PROJECT PARTICIPANTS ARE NOT GENERAL OBLIGATIONS OF THE PROJECT PARTICIPANTS AND ARE PAYABLE SOLELY FROM THE REVENUES DERIVED FROM SALES OF ENERGY TO THEIR CUSTOMERS. THE INDENTURE DOES NOT MORTGAGE THE CLEAN ENERGY PROJECT OR ANY TANGIBLE PROPERTIES OR ASSETS OF CCCFA OR THE PROJECT PARTICIPANTS.

See APPENDIX B for definitions of certain terms and see APPENDIX C for a further description of certain provisions of the Indenture.

Flow of Funds

All Revenues are required by the Indenture to be deposited upon receipt thereof to the credit of the Revenue Fund. Moneys (to the extent available) are required to be transferred from the Revenue Fund monthly on or before the 25th day of each month (or, if such day is not a Business Day, the next succeeding Business Day), except as noted below, to the extent available and in the order set forth below:

first to the Administrative Fee Fund, the amounts received from the Project Participants under the Power Supply Contracts in respect of CCCFA's administrative fees, subject to monthly limits on the amount of such transfers;

second to the Operating Fund, the amount, if any, required so that the balance therein shall equal the amount estimated to be necessary for the payment of Operating Expenses coming due for the following Month (but no such payments or expenses for any prior Month);

third subject to the provisos below, to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in the Indenture, or (B) the amount necessary to cause the cumulative Scheduled Debt Service Deposits to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

fourth to the Commodity Swap Payment Fund, the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

fifth To the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Call Receivables and the payment of interest on all Call Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

provided, however, that if a Project Participant's payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred to the Debt Service Account to the extent necessary such that the amount available for transfer to the Commodity Swap Payment Fund is not less than (a) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (b) the sum of all Net Participant Shortfall Amounts for such Month; and *provided further*, the amount required to be transferred to the Debt Service Account pursuant to clause (iii) above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

If, after the scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified in the Indenture, the Trustee shall immediately notify CCCFA of such deficiency and the Trustee shall (a) if CCCFA has not previously done so, cause CCCFA to suspend all deliveries of all quantities of Energy under a Power Supply Contract to the Project Participant that is in default thereunder, and (b) promptly give notice to the Energy Supplier to follow the remarketing provisions set forth in the Prepaid Energy Sales Agreement.

In each Month during which (a) there is a deposit of Revenues into the Revenue Fund and (b) payment of a Principal Installment is due, after making such transfers, credits and deposits as described in the first paragraph of this section "Flow of Funds," and after the applicable Principal Installment payment date, the Trustee shall credit to the General Fund the remaining balance in the Revenue Fund. See "Revenues and Revenue Fund" and "Payments into Certain Funds" in APPENDIX C.

As noted above, certain amounts are pledged as a part of the Trust Estate but do not constitute Revenues and are not deposited into the Revenue Fund, including (a) any Termination Payment received under the Prepaid Energy Sales Agreement, which is to be deposited directly into the Redemption Account, (ii) any payments received from the Energy Supplier under the Receivables Purchase Provisions in respect of Call Receivables, which are to be deposited into the Commodity Swap Payment Fund, and (iii) any Interest Rate Swap Receipts, which are to be deposited into the Debt Service Account, all as provided in the Indenture.

Debt Service Account

The amounts deposited into the Debt Service Account, including the Capitalized Interest Subaccount therein, must be held in such Account and applied to the payment of Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date when due. Amounts on deposit in the Debt Service Account, including the Capitalized Interest Subaccount therein, will be invested pursuant to the Debt Service Account Investment Agreement, which will provide for scheduled withdrawals to pay debt

service on the Bonds when due and, in the case of extraordinary redemption, to pay the Redemption Price without penalty or market value adjustments.

The Capitalized Interest Subaccount of the Debt Service Account will be funded with a deposit of Bond proceeds on the Initial Issue Date of the Bonds. The amount so deposited will be used to pay the interest coming due on the Bonds and the Interest Rate Swap through _____.

Commodity Swap Payment Fund

The amounts deposited into the Commodity Swap Payment Fund shall be applied from time to time by the Trustee solely to the payment of Commodity Swap Payments when due.

In the event that (i) a Project Participant fails to pay the amount due under its Power Supply Contract and (ii) as of the next Business Day, there is or will be a Swap Payment Deficiency, the Trustee shall prepare and deliver to the Energy Supplier a Call Receivables Offer pursuant to the Receivables Purchase Provisions. If the Energy Supplier elects to purchase Call Receivables pursuant to such Call Receivables Offer, which election shall not be later than the Business Day following receipt by the Energy Supplier of the Call Receivables Offer, the Energy Supplier shall deliver to the Trustee the Call Option Notice setting forth the purchase date, which shall be the 25th day of the Month in which the Energy Supplier receives the Call Receivables Offer (or if such day is not a Business Day, the next succeeding Business Day). The Trustee is authorized to sell the Call Receivables then owed by the Project Participants pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. If the Energy Supplier elects to purchase such Call Receivables, all amounts received pursuant to the Receivables Purchase Provisions in respect of Call Receivables purchased shall be deposited in the Commodity Swap Payment Fund and applied to payment of Commodity Swap Payments.

Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application as described above.

Redemption Account

In the event of an early termination under the Prepaid Energy Sales Agreement, the Energy Supplier must pay the Termination Payment directly to the Trustee for the account of CCCFA into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the extraordinary mandatory redemption of Outstanding Bonds as described below under "THE BONDS — Redemption — *Extraordinary Mandatory Redemption.*"

Restriction on Additional Obligations

Except as expressly permitted under the terms of the Indenture for so long as the Bonds are Outstanding, CCCFA shall not, without a Rating Confirmation, issue any bonds, notes, debentures or other evidences of indebtedness of similar nature, other than the Bonds and any refunding bonds, or otherwise incur obligations other than those contemplated by the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the CCCFA Custodial Agreements, the Commodity Swaps, and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments), payable out of or secured by a pledge or assignment of, or lien on, the Trust Estate; and,

except as expressly permitted under the terms of this Indenture, shall not, without a Rating Confirmation, create or cause to be created any lien or charge on the Trust Estate except as provided in or contemplated by the Indenture, the Prepaid Energy Sales Agreement, the Power Supply Contract, the CCCFA Custodial Agreements, the Commodity Swaps, and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments).

Nothing contained in the Indenture shall prevent CCCFA from entering into or issuing, if and to the extent permitted by law (a) evidences of indebtedness (1) payable out of moneys in the Project Fund as part of the Cost of Acquisition or (2) payable out of or secured by a pledge and assignment of the Trust Estate or any part thereof to be derived on and after such date as the pledge of the Trust Estate provided in the Indenture shall be discharged and satisfied as provided therein, or (b) Commodity Swaps and Interest Rate Swaps upon the terms and conditions set forth herein.

Amendment of Indenture

CCCFA and the Trustee may, subject to the conditions and restrictions in the Indenture, enter into a Supplemental Indenture or Indentures without the consent of the Bondholders for certain purposes upon receipt of a Rating Confirmation. See *"Supplemental Indenture Not Requiring Consent of Bondholders," "General Provisions"* and *"Powers of Amendment"* in APPENDIX C hereto.

Investment of Funds

General. Subject to the provisions of the Indenture, amounts on deposit in the Funds and Accounts may be invested in, among other things, guaranteed investment contracts, forward delivery agreements or similar agreements that provide for a specified rate of return over a specified time period with providers (or their guarantors) rated at the time the investment is made at least at the same credit rating level as the Energy Supplier (or if the Energy Supplier is not rated, the credit rating level of its guarantor). See APPENDIX B—DEFINITIONS OF CERTAIN TERMS and "Investment of Certain Funds" in APPENDIX C.

Debt Service Account Investment Agreement. On the Initial Issue Date of the Bonds, it is expected that CCCFA or the Trustee will enter into an investment agreement (which may be in the form of an ISDA Master Agreement) with respect to the Debt Service Account, including the Capitalized Interest Subaccount therein (the *"Debt Service Account Investment Agreement"*). The Debt Service Account Investment Agreement constitutes a "Debt Service Fund Agreement" as defined in the Indenture. The Debt Service Account Investment Agreement will have a term coterminous with the Initial Interest Rate Period and is required to meet all of the criteria of a Qualified Investment under the Indenture and is expected to be bid out on the day of Bond pricing to qualified investment providers.

Required qualifications for the initial Investment Agreement Provider include: (a) a minimum credit rating requirement for the Investment Agreement Provider (or its guarantor) of at least that of Morgan Stanley, which as of the date of this Official Statement is "A1" by Moody's, and (b) a requirement that upon a credit rating withdrawal, suspension or downgrade of the Investment Agreement Provider (or its guarantor) below the lower of (i) "A1" by Moody's or (ii) the then-current credit rating of Morgan Stanley, the Investment Agreement Provider will provide a credit remedy, such as providing credit support or posting eligible collateral, or CCCFA will have the right to terminate the agreement.

Required qualifications for a Debt Service Account Investment Agreement that is a forward delivery agreement include: (a) the minimum credit rating requirement described in the clause (a) of the preceding paragraph, (b) the credit downgrade provisions described in clause (b) of the preceding paragraph, (c) opinions of counsel, domestic and foreign, where applicable, that the securities delivered in connection with the agreement do not constitute property of the forward delivery agreement provider under bankruptcy, and will not be subject to automatic stay, and (d) a limitation that the only securities the forward delivery agreement provider is allowed to deliver are non-callable, non-prepayable (i) direct obligations of the United States government or any of its agencies that are unconditionally guaranteed as to principal and interest by the United States of America, or (ii) senior debt obligations of any agency of the United States government.

The Debt Service Account Investment Agreement will provide for a fixed interest rate to be paid on the funds invested and will provide for scheduled withdrawals in connection with certain Bond Payment Dates.

Upon transaction termination, whether by extraordinary mandatory redemption or final maturity, the funds invested under the Debt Service Account Investment Agreement will be used to pay the redemption price or debt service due on the Bonds. If the Debt Service Account Investment Agreement terminates, all invested funds are required to be returned to the Trustee.

Enforcement of Project Agreements

Power Supply Contracts. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Power Supply Contracts, as well as any other contract or contracts entered into relating to the Clean Energy Project, and that it will duly perform its covenants and agreements thereunder.

CCCFA has also covenanted to exercise promptly its right to suspend all deliveries of Energy under a Power Supply Contract if the Project Participant thereunder fails to pay when due any amounts owed thereunder and to promptly give notice to the Energy Supplier to follow provisions set forth in the Prepaid Energy Sales Agreement for each month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

In the event that the Project Participant makes a Remarketing Election with respect to any Reset Period, CCCFA will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Prepaid Energy Sales Agreement for each month of such Reset Period with respect to the quantities of Energy that would otherwise have been delivered to such Project Participant. See "THE RE-PRICING AGREEMENT."

CCCFA has further covenanted that it will not consent or agree to or permit any termination or rescission of, any assignment or novation (in whole or in part) by the Project Participants of, or any amendment to, or otherwise take any action under or in connection with, the Power Supply Contracts that will impair the ability of CCCFA to comply during the current or any future year with the collection of fees and charges pursuant to the Indenture. Under the Indenture, upon the satisfaction of certain conditions, including delivery of a Rating Confirmation from each rating agency then rating the Bonds, CCCFA may amend a Power Supply Contract or assign all or a portion of a Power Supply Contract with a Project Participant to another Municipal Utility.

Trustee as Agent. Under the Indenture, CCCFA has appointed and directed the Trustee as its agent to issue notices and to take any other actions that CCCFA is required or permitted to take in order to enforce performance under the (a) Prepaid Energy Sales Agreement, (b) the Receivables Purchase Provisions, and (c) the Power Supply Contracts. CCCFA has retained, in the absence of any conflicting action by the Trustee, all of its obligations under the foregoing agreements and the right to exercise any rights for which it has appointed the Trustee as its agent as described in the preceding sentence, and provided that no default under the applicable Power Supply Contract has occurred and is continuing, CCCFA has agreed to take direction as to such matters from the Project Participants acting collectively; *provided, however*, if an Event of Default has occurred, the Trustee will have the right to notify CCCFA to cease exercising such rights, subject to certain rights of the Energy Supplier and the Project Participants under the Power Supply Contracts.

Prepaid Energy Sales Agreement. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Prepaid Energy Sales Agreement and that it will duly perform its covenants and agreements under the Prepaid Energy Sales Agreement.

The Trustee will promptly notify CCCFA of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Prepaid Energy Sales Agreement. CCCFA will provide the Trustee with Written Notice of the Early Termination Payment Date (a) by 12:00 noon, New York City time, on the fifth Business Day preceding a Mandatory Purchase Date if an amount equal to the Purchase Price of the Bonds that are subject to such Mandatory Purchase Date has not been deposited with the Trustee and (b) in all other cases, not more than five Business Days after such date is determined.

CCCFA has further covenanted that it will not consent or agree to or permit any rescission or assignment of or amendment to or otherwise take any action under or in connection with the Prepaid Energy Sales Agreement which would in any manner materially impair or materially adversely affect its rights thereunder or the rights or security of the Bondholders under the Indenture; *provided*, that the Prepaid Energy Sales Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation.

CCCFA Commodity Swap. Amounts due to CCCFA under the CCCFA Commodity Swap are payable directly to the Trustee. Pursuant to the Indenture, Commodity Swap Receipts are to be deposited by the Trustee into the Revenue Fund. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the CCCFA Commodity Swap and duly perform its covenants and agreements thereunder,

- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the CCCFA Commodity Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and

- it will not exercise any right to terminate the CCCFA Commodity Swap unless either (i) it has entered into a replacement CCCFA Commodity Swap that meets the requirements of the Indenture (described below) or (ii) the Early Termination Date will occur under the Prepaid Energy Sales Agreement prior to or as of the termination date of the CCCFA Commodity Swap.

CCCFA may replace the CCCFA Commodity Swap (and any related guaranty of the Commodity Swap Counterparty's obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty upon delivery to the Trustee of a Rating Confirmation. If the CCCFA Commodity Swap is subject to termination, CCCFA may enter into a replacement CCCFA Commodity Swap without a Rating Confirmation, but only if the proposed replacement CCCFA Commodity Swap is identical in all material respects to the existing CCCFA Commodity Swap that is to be replaced, and the counterparty under the replacement CCCFA Commodity Swap (or its guarantor) (a)(i) is rated not lower than the rating of the Energy Suppler (or its guarantor) or the ratings then assigned to the Bonds (whichever is lower) or (ii) provides such collateral and security arrangements as CCCFA determines to be necessary, and (b) enters into replacement Custodial Agreements with the Energy Supplier and CCCFA.

In the event that the CCCFA Commodity Swap is terminated by CCCFA and is not replaced (a) within the 120-day replacement period provided for in the Prepaid Energy Sales Agreement or (b) after six consecutive monthly payments have been received by CCCFA from the Custodian (instead of directly from the Commodity Swap Counterparty), CCCFA has covenanted in the Indenture that it will exercise its right to terminate the Prepaid Energy Sales Agreement in accordance with its terms. Further, CCCFA has covenanted under the Indenture to terminate the CCCFA Commodity Swap (a) within 120 days if it is not receiving payments owed to it thereunder, or (b) after six consecutive monthly payments by the Custodian if CCCFA is receiving payments from the Custodian instead of directly from the Commodity Swap Counterparty, in order to replace both the CCCFA Commodity Swap and the Energy Supplier Commodity Swap.

Interest Rate Swap. Amounts due to CCCFA under the Interest Rate Swap are payable directly to the Trustee. Pursuant to the Indenture, Interest Rate Swap Receipts are to be deposited by the Trustee in the Debt Service Account. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder,

- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and

- it will not exercise any right to terminate the Interest Rate Swap unless it either (i) has entered into a replacement Interest Rate Swap that meets requirements specified in the Indenture or (ii) causes or permits the early termination of the Prepaid Energy Sales Agreement prior to or as of the termination date of the Interest Rate Swap.

CCCFA may enter into a replacement Interest Rate Swap at any time by delivering a Rating Confirmation to the Trustee. If the Interest Rate Swap is subject to termination, CCCFA may enter into a replacement Interest Rate Swap without a Rating Confirmation if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap and (a) the counterparty to the replacement Interest Rate Swap is rated not lower than (i) the credit rating of the Energy Supplier or its guarantor or (ii) the rating assigned to the Bonds by each Rating Agency then rating the Bonds, whichever

is less, or (b) the counterparty to the replacement Interest Rate Swap provides such collateral and security arrangements as CCCFA determines to be necessary.

SOURCES AND USES OF FUNDS

The sources and uses of funds in connection with the issuance of the Bonds are approximately as follows:

SOURCES:	
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 management, consulting, underwriting, rating agency, Trustee, financial advisor, legal and other fees and other expenses related to the issuance of the Bonds and the acquisition of the Clean Energy Project.

THE BONDS

General

The Bonds will mature (subject to redemption as described below) on the dates and in the principal amounts shown on the inside cover page of this Official Statement. The Bonds will be initially issued in denominations of $5,000 and whole multiples thereof (an "*Authorized Denomination*"). The Bonds will be initially issued in book-entry only form through the facilities of The Depository Trust Company, New York, New York ("*DTC*"). See "THE BONDS — Book-Entry System" and APPENDIX F for a description of DTC and its book-entry system.

Interest

During the Initial Interest Rate Period, the Bonds will bear interest as described below.

Series 2021B-1 Bonds

During the Initial Interest Rate Period, the Series 2021B-1 Bonds will bear interest in a Fixed Rate Period, with the Series 2021B-1 Bonds of each maturity bearing interest at the fixed rates shown on the inside cover page of this Official Statement. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds will be payable semiannually on _____ 1 and _____ 1 of each year, commencing _____. During the Initial Interest Rate Period, interest on the Series 2021B-1 Bonds will be computed on the basis of a 360-day year of twelve 30-day months.

Series 2021B-2 Bonds

The Initial Interest Rate Period for the Series 2021B-2 Bonds will be a SIFMA Index Rate Period, and the Series 2021B-2 Bonds will bear interest at the SIFMA Index Rate determined as described below during the SIFMA Index Rate Period.

Interest Payments. Interest on each Series 2021B-2 Bond is payable on the first Business Day of each month, commencing with the first Business Day of ____ 2021*, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

Determination of the SIFMA Index Rate. At least two Business Days prior to the Initial Issue Date of the Series 2021B-2 Bonds, the SIFMA Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, the SIFMA Index Rate shall be determined by the Calculation Agent and shall be effective from an Index Rate Reset Date to but not including the following Index Rate Reset Date. Upon the written request of any Owner of Series 2021B-2 Bonds, the Trustee shall confirm the SIFMA Index Rate then in effect. All percentages resulting from any step in the calculation of interest on the Series 2021B-2 Bonds while in the SIFMA Index Rate Period will be rounded, if necessary, to the nearest hundred-thousandth of a percentage point (i.e., to five decimal places) with five millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on the Series 2021B-2 Bonds will be rounded to the nearest cent (with one-half cent being rounded upward).

SIFMA Index Rate. The SIFMA Index Rate is a variable per annum rate of interest equal to the sum of (i) the SIFMA Index plus (ii) the Applicable Spread.

Applicable Spread. The Applicable Spread is the margin added to the SIFMA Index as shown on the inside cover page of this Official Statement for the Series 2021B-2 Bonds. The Applicable Spread shall remain constant for the duration of the SIFMA Index Rate Period.

SIFMA Index. "*SIFMA Index*" means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the immediately succeeding Business Day. If the SIFMA Index is not available as of any Index Rate Reset Date, a substitute or replacement index for such Index Rate Reset Date will be designated by CCCFA in compliance with the Indenture.

Index Rate Reset Date. The Index Rate Reset Date for the SIFMA Index Rate applicable to the Series 2021B-2 Bonds shall be Thursday of each week or, if the SIFMA Index is not issued on Wednesday of such week, the Business Day next succeeding the day on which the SIFMA Index for such week is issued.

* Preliminary; subject to change.

Calculation Agent

[_____] will be appointed by CCCFA as Calculation Agent for any Series 2021B-2 Bonds that are issued pursuant to the Indenture and a Calculation Agent Agreement between the parties.

General

After the Initial Interest Rate Period, the Outstanding Bonds may be remarketed into another Fixed Rate Period or Index Rate Period(s), as applicable, or may be remarketed or converted to one or more of a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period or an Index Rate Period(s). ***This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after the Bonds have been converted to another Interest Rate Period.***

Interest on any Bond that is payable and is punctually paid or for which payment is duly provided for on any Interest Payment Date, shall be paid to the Person in whose name that Bond is registered at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the *"Regular Record Date"*); provided that in the case of the first Interest Payment Date for the Index Rate Bonds, the record date shall be the Initial Issue Date.

Any interest on any Bond that is payable, but is not punctually paid or duly provided for on any Interest Payment Date (*"Defaulted Interest"*), shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by CCCFA to the Persons in whose names the Bonds are registered at the close of business on a date (the *"Special Record Date"*) for the payment of such Defaulted Interest, which shall be fixed in the following manner: CCCFA shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time CCCFA shall deposit with the Paying Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in the Indenture. The Bond Registrar will then fix a Special Record Date for the payment of such Defaulted Interest which will be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the notice of the proposed payment. The Bond Registrar shall promptly notify CCCFA of such Special Record Date and, in the name and at the expense of CCCFA, will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

Tender

Mandatory Tender. The Bonds of each Series maturing on _____ 1, 20__ are required to be tendered for purchase on _____ 1, 20__ (the *"Mandatory Purchase Date"*), which is the day following the end of the Initial Interest Rate Period. The Purchase Price of the Bonds on the Mandatory Purchase Date is equal to 100% of the principal amount thereof and is payable in immediately available funds *first* from amounts on deposit in the Remarketing Proceeds Account established by the Indenture and *second* from amounts on deposit in CCCFA Purchase Account established by the Indenture. Accrued interest due

on the Bonds on the Mandatory Purchase Date, which is an Interest Payment Date, shall be paid from amounts in the Debt Service Account.

The Purchase Price of each Bond on the Mandatory Purchase Date shall be payable only upon surrender of such Bond to the Trustee at its Principal Office, accompanied by an instrument of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in a notice provided to the Owners by the Trustee, such notice to be given no less than 15 days prior to the applicable Mandatory Purchase Date. In the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on the Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and no interest shall accrue thereon on and after the Mandatory Purchase Date, and the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof.

Failed Remarketing. Under the Indenture, a *"Failed Remarketing"* means, (a) with respect to the Bonds on the Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date, or (b) with respect to the Bonds (i) if, on the last day of the Initial Reset Period prior to the Mandatory Purchase Date, CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by 12:00 noon, New York City time, on the fifth business day preceding such Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. In the case of a Failed Remarketing, an extraordinary mandatory redemption of the Bonds will have the same economic effect on Bondholders as a mandatory tender of the Bonds on the Mandatory Purchase Date.

No Optional Tender. The Bonds of each Series are ***not*** subject to optional tender by Bondholders during the Initial Interest Rate Period.

Redemption

Optional Redemption of Series 2021B-1 Bonds. The Series 2021B-1 Bonds are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and by lot within a maturity) on any date prior to _____ at a Redemption Price, calculated by a quotation agent selected by CCCFA, equal to the greater of:

(a) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2021B-1 Bonds to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of the stated maturity date of such Series 2021B-1 Bond or the Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax-Exempt Municipal Bond Rate (described below) for such Series 2021B-1 Bonds minus 0.25% per annum, and

(b) the Amortized Value thereof (described below);

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

The Series 2021B-1 Bonds maturing on and after the Mandatory Purchase Date are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and by lot within a maturity) on any date on or after _____ at a Redemption Price equal to the Amortized Value thereof as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2021B-1 Bonds to be redeemed), as follows:

	REDEMPTION PRICE	
REDEMPTION PERIOD (DATES INCLUSIVE)	____ MATURITY	____ MATURITY

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

In lieu of redeeming the Bonds pursuant to this provision, CCCFA may direct the Trustee to purchase the Bonds at a Purchase Price equal to the Redemption Price described above. Any Bonds so purchased may be remarketed in a new Interest Rate Period.

The *"Applicable Tax-Exempt Municipal Bond Rate"* means, for the Series 2021B-1 Bonds of any maturity, the "Comparable AAA General Obligations" yield curve rate for the year of such maturity (or Mandatory Purchase Date, as applicable) as published by Municipal Market Data at least five Business Days and not more than fifteen Business Days prior to the date of redemption. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations" yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax-Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight-line basis. This rate is made available daily by Municipal Market Data and is available to its subscribers through its internet address: www.tm3.com. In calculating the Applicable Tax-Exempt Municipal Bond Rate, should Municipal Market Data no longer publish the "Comparable AAA General Obligations" yield curve rate, then the Applicable Tax-Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Advisors and is available to its subscribers through its internet address: www.mma-research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax-Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax-exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date (or Mandatory Purchase Date, as applicable) of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax-Exempt Municipal Bond Rate shall be final and binding in the absence of manifest error.

"Amortized Value" means, with respect to 2021B-1 Bond to be redeemed during the Initial Interest Rate Period, the principal amount of such 2021B-1 Bond multiplied by the price of such Bond expressed

as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevails on the date of delivery of the Bonds), with a delivery date equal to the date of redemption, a maturity date equal to the earlier of (a) the stated maturity date of such Bond, or (b) the Mandatory Purchase Date, and a yield equal to such Bond's original reoffering yield (as set forth on the inside cover page of this Official Statement), *provided that* in the case of an optional redemption of the Series 2021B-1 Bonds on or after _____, the Amortized Value shall be determined as of the first day of the month in which such redemption occurs.. The Amortized Value of the Bonds as of certain dates during the Initial Interest Rate Period is shown on APPENDIX G

Optional Redemption of Index Rate Bonds. The Index Rate Bonds are subject to redemption at the option of CCCFA in whole or in part on any day on and after the first day of the third month preceding the Mandatory Purchase Date, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the date of redemption. In lieu of redeeming Index Rate Bonds pursuant to this provision, CCCFA may direct the Trustee to purchase such Index Rate Bonds at a Purchase Price equal to the Redemption Price described above. Any Index Rate Bonds so purchased may be remarketed in a new Interest Rate Period.

Extraordinary Mandatory Redemption. The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the month following the Early Termination Payment Date (which will be the same day as the Mandatory Purchase Date in the event a Failed Remarketing has occurred) at a Redemption Price equal to (a) in the case of the Series 2021B-1 Bonds, the Amortized Value thereof, and (b) in the case of the Index Rate Bonds, 100% of the principal amount thereof, in each case plus accrued and unpaid interest to the redemption date. See APPENDIX H for a schedule showing the Redemption Price (excluding accrued interest) of all of the Bonds upon an extraordinary mandatory redemption following an Early Termination Payment Date that occurs during the Initial Interest Rate Period.

CCCFA shall provide the Trustee with Written Notice of the Early Termination Payment Date (x) on the fifth business day preceding a Mandatory Purchase Date if an amount equal to the Purchase Price of the Bonds that are subject to such Mandatory Purchase Date has not been deposited with the Trustee and (y) in all other cases, not more than five days after such date is determined.

Notice of Redemption. In the case of every redemption of Bonds, the Trustee must cause notice of such redemption to be given to the Holder of any Bonds designated for redemption, in whole or in part, at such Holder's address as the same shall last appear upon the registration books maintained by the Trustee, by mailing a copy of the redemption notice, by first-class mail, postage prepaid, not less than 20 days [(15 days in the case of an extraordinary mandatory redemption described above)] and not more than 45 days (30 days in the case of an extraordinary mandatory redemption described in the preceding paragraph) prior to the redemption date.

Each notice of redemption must identify the Bonds to be redeemed and specify the redemption date, the Redemption Price or the manner in which it will be calculated, that the Bonds must be surrendered to collect the Redemption Price, the address at which the Bonds must be surrendered, and that on and after said date interest on the Bonds will cease to accrue. Neither any defect in any redemption notice nor the failure of any Holder to receive any such notice will affect the validity of the proceedings for the redemption of the Bonds or any portions thereof with respect to any Holder to whom notice as required by the Indenture was given.

In the event that the Bonds become subject to extraordinary redemption as a result of a Failed Remarketing that occurs as a result of the Trustee not receiving the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds may be a conditional notice of redemption, delivered not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee's failure to receive, by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to a mandatory tender on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds will be deemed to have been paid under the Indenture, such notice must state that such redemption will be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such moneys shall not have been so received said notice will be of no force and effect, and CCCFA will not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such moneys are not so received, the redemption will not be made and the Trustee must within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received and that such redemption was not made.

Effect of Redemption. On any redemption date, the Redemption Price of each Bond to be redeemed, together with the accrued interest thereon to such date, will become due and payable, and from and after such date, notice having been given and moneys available solely for such redemption being on deposit with the Trustee in accordance with the provisions of the Indenture governing redemption of such Bonds, then, notwithstanding that any Bonds called for redemption may not have been surrendered, no further interest will accrue on any of such Bonds. From and after such date of redemption (such notice having been given and moneys available solely for such redemption being on deposit with the Trustee), the Bonds to be redeemed will not be deemed to be Outstanding under the Indenture.

Partial Redemption of Bonds. If less than all of the Bonds of a like maturity, tenor and series are called for redemption, such Bonds or portions of Bonds of such series, maturity and tenor must be redeemed in increments of Authorized Denominations, and such increments to be called for redemption must be selected by lot in such manner as the Trustee determines. Upon surrender of any Bond called for redemption in part only, CCCFA must execute, and the Trustee must authenticate and deliver to the Holder thereof, a new Bond or Bonds of Authorized Denominations and the same series, tenor and maturity in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

Book-Entry System

The Bonds will be initially issued in book-entry only form through the facilities of DTC. The Bonds will be transferable and exchangeable as set forth in the Indenture and, when issued, will be registered in the name of Cede & Co., as nominee of DTC. DTC will act as securities depository for the Bonds. So long as Cede & Co. is the registered owner of the Bonds, principal of and premium, if any, and

interest on the Bonds are payable by wire transfer by the Trustee to Cede & Co., as nominee for DTC, which, in turn, will remit such amounts to DTC participants for subsequent disbursement to the Beneficial Owners. See APPENDIX F — "BOOK-ENTRY SYSTEM."

DEBT SERVICE REQUIREMENTS

Set forth in the following table are the Debt Service requirements on the Bonds, giving effect to the fixed interest rates payable by CCCFA under the Interest Rate Swap, in each bond year during the Initial Interest Rate Period, excluding the purchase price of the Bonds that mature on _____ that is payable on the Mandatory Purchase Date (_____).

YEAR ENDING _____ 1	PRINCIPAL AMOUNT	INTEREST	TOTAL
TOTAL			

As of the Mandatory Purchase Date, $_____ principal amount of the Bonds will remain outstanding and the Bonds outstanding are required to be purchased pursuant to mandatory tender.

THE PREPAID ENERGY SALES AGREEMENT

Set forth below is a summary of certain provisions of the Prepaid Energy Sales Agreement relating to the purchase and sale of Energy during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Prepaid Energy Sales Agreement and accordingly is qualified by reference to the full text thereof.

Purchase and Sale

Under the Prepaid Energy Sales Agreement, the Energy Supplier agrees to deliver EPS Compliant Energy in the monthly quantities set forth in the Prepaid Energy Sales Agreement (the "*Prepaid Energy*") during the Delivery Period and CCCFA has agreed to make a lump sum advance payment to the Energy Supplier for all of the cost of the Prepaid Energy to be delivered during the Delivery Period. The total quantity of expected Prepaid Energy to be delivered by the Energy Supplier during the initial Delivery Period is approximately _____ MWh.

For discussion of the Contract Price, see "THE POWER SUPPLY CONTRACT — Pricing Provisions."

Delivery of Prepaid Energy

Assigned Energy. Assigned Energy delivered under the Prepaid Energy Sales Agreement shall be Scheduled for delivery to and receipt at the delivery point specified in the applicable Assignment Schedule

(an "*Assigned Delivery Point*"). Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Schedule. At the start of the Delivery Period, the Project Participants will assign the Initially Assigned PPAs, as described under " – *Assignment of Power Purchase Agreements*" below, for delivery of Assigned Energy equal to the Prepaid Energy required to be delivered by the Energy Supplier during the term of such assignments.

Base Energy. If the Assigned Energy for any month is less than the quantity of Prepaid Energy required to be delivered that month, the Energy Supplier is required to deliver Base Energy for remarketing under the terms of the Prepaid Energy Sales Agreement. Base Energy is not expected to be delivered during the Initial Reset Period.

Title. Title to and risk of loss of the Energy delivered under the Prepaid Energy Sales Agreement shall pass from the Energy Supplier to CCCFA at the applicable Delivery Point. The transfer of title and risk of loss for all Assigned Energy shall be set forth in the applicable Assignment Agreement.

Aggregate Quantity. The aggregate quantity of Energy to be delivered during the term of the Delivery Period varies based on the quantities of Prepaid Energy CCCFA has agreed to deliver to the Project Participants under the Power Supply Contracts. The approximate aggregate monthly quantities of Prepaid Energy to be delivered under the Prepaid Energy Sales Agreement during the Initial Reset Period range from a high of approximately _____ MWh in some months to a low of _____ MWh in other months.

Assignment of Power Purchase Agreements

Each Project Participant has assigned its respective Initial Assigned Rights and Obligations to MSCG. The Assigned PPAs pursuant to which the Initial Assigned Rights and Obligations have been assigned to MSCG are described as follows:

East Bay Community Energy

Name of Project	Location	Term of PPA	Type of Project	Commercial Operation Date	Capacity	Annual Prepaid Output

Silicon Valley Clean Energy

Name of Project	Location	Term of PPA	Type of Project	Commercial Operation Date	Capacity	Annual Prepaid Output

PPA Payment Custodial Agreement. The Project Participant, MSES and [_____], as custodian (in such capacity, the "*Custodian*") have entered into a custodial agreement (the "*PPA Payment Custodial Agreement*") to administer payments to be received by the sellers of Assigned Energy pursuant to the Assigned PPAs (the "*PPA Sellers*").

Failure to Deliver or Receive Energy

Assigned Quantities. Neither CCCFA nor the Energy Supplier shall have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Quantities, except as described under the following subheading "*— Assignment of Power Purchase Agreements*."

Base Energy. Because CCCFA will have prepaid for all Energy to be delivered under the Prepaid Energy Sales Agreement, the Energy Supplier will be required to pay CCCFA for all Base Energy that the Energy Supplier fails to deliver or CCCFA fails to receive for any reason, including events of *force majeure*. The amount the Energy Supplier is required to pay is equal to the quantity that was not delivered or received multiplied by a price that is determined in a manner depending upon the reason for such failure:

- If the Energy Supplier fails to deliver Base Energy for reasons other than *force majeure* or action or inaction by CCCFA, such quantity is referred to herein as a "*Shortfall Quantity*," and the Energy Supplier is required to pay the higher of (a) the replacement price paid by CCCFA, or (b) the Day-Ahead Market Price applicable to the Hour and the Delivery Point for which the Shortfall Quantity arose, plus in either case an administrative fee of $0.50/MWh. In such event, CCCFA will cause the Project Participant to exercise Commercially Reasonable Efforts to mitigate damages paid by the Energy Supplier under the Prepaid Energy Sales Agreement.

- If CCCFA fails to receive all or any portion of Base Energy for reasons other than *force majeure*, for which CCCFA has previously issued a Remarketing Notice in accordance with the Prepaid Energy Sales Agreement, CCCFA shall be deemed to have issued a Deemed Remarketing Notice with respect to such portion.

- If either the Energy Supplier fails to deliver all or any portion of Base Energy or CCCFA fails to receive all or any portion of Base Energy due to events of *force majeure*, the Energy Supplier is required to pay the applicable Day-Ahead Market Price for such portion of Base Energy.

The "Day-Ahead Market Price" is the day-ahead market price for the delivery point specified in the Prepaid Energy Sales Agreement. See "THE POWER SUPPLY CONTRACT — Pricing Provisions." **Base Energy are not expected to be delivered during the Initial Reset Period.**

Energy Remarketing

In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, the shortfall quantities will be delivered and remarketed as Base Energy under the Prepaid Energy Sales Agreement. Any such remarketing of Base Energy will be treated as a private-business use sale, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To

the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

If a Project Participant experiences a loss of Energy load such that it has insufficient demand for the Prepaid Quantities, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

In the event of any expiration or termination of an Assigned PPA, the applicable Project Participant is required to use Commercially Reasonable Efforts to enter into a new limited assignment agreement relating to one or more additional PPAs, providing for the assignment of its rights to delivery of quantities of EPS Compliant Energy equivalent to the Prepaid Quantities for the term of such assignment. If no such replacement is available or is not accepted by MSCG, MSES is required to purchase such quantities for its own account, and the applicable Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. If the Project Participant has not made Commercially Reasonable Efforts to replace, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. To the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

Remarketing Non-Default Termination Event

MSES is required to use Commercially Reasonable Efforts to remarket Base Energy first in Qualifying Sales and next in non-private business sales. If MSES is unable to remarket Base Energy required to be 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 gas purchased each month, (ii) take the actions necessary to remediate the necessary amount of the Bonds pursuant to their optional redemption provisions, and (iii) deliver to the Trustee amendments to the Prepaid Energy Sales Agreement, Power Supply Contracts and Commodity Swaps reflecting the corresponding reduction in Energy quantities, as well as revisions to certain schedules of the Indenture, an accountant's verification, a Favorable Opinion of Bond Counsel and a Rating Confirmation, or (b) Bond Counsel otherwise provides an opinion that such event has not affected the tax-exempt status of the interest on the Bonds. The limits described above are mandated by certain tax requirements and are subject to increase based on revised tax

requirements as well as any bond remediations undertaken by CCCFA outside of a termination of the Prepaid Energy Sales Agreement.

Payment Provisions

The prepayment from CCCFA to MSES will be due prior to the inception of the term of the Prepaid Energy Sales Agreement. To the extent any other amount becomes due to MSES or CCCFA thereunder (for example, as a result of remarketing or failure to deliver by MSES), such amount will be due to the other party on or before the 25th or 22nd day, respectively, of the month following the month in which such amount accrues.

Force Majeure

Each of CCCFA and MSES are excused from their respective obligations to receive and deliver Energy under the Prepaid Energy Sales Agreement to the extent prevented by force majeure, defined generally as any cause not within the reasonable control of the party claiming an excuse to its obligations. This excuse to performance includes such events as natural disasters, curtailment of electricity transmission, government actions, and strikes. MSES is required to pay to CCCFA the Day Ahead Index Price with respect to any Prepaid Quantities not delivered due to a force majeure.

Assignment

Neither party may assign its rights under the Prepaid Energy Sales Agreement without the other party's consent except:

(a) pursuant to the Indenture, CCCFA may transfer, sell, pledge, encumber or assign the Prepaid Energy Sales Agreement to the Trustee in connection with a financing arrangement; *provided* that CCCFA may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, CCCFA also assigns CCCFA Commodity Swap and CCCFA Custodial Agreement to the same assignee; and

(b) MSES may assign the Prepaid Energy Sales Agreement to an affiliate of MSES; *provided* that (i) the Morgan Stanley Guarantee continues to apply to the obligations of such assignee or (ii) the assignee provides CCCFA with a parent guarantee and a Rating Confirmation, which assignment constitutes a novation; and *provided* that MSES may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, MSES also assigns the MSES Commodity Swap and the MSES Custodial Agreement to the same assignee.

If either (a) MSES notifies CCCFA that the Morgan Stanley Guarantee will be terminated as of the end of the Initial Reset Period or the then-current Reset Period, (b) MSES is unable to provide, under the Re-Pricing Agreement, an estimated Available Discount for any Reset Period that is equal to or greater than the minimum discount under the Power Supply Contracts or (c) both (i) MSES has agreed under the Re-Pricing Agreement to provide an Available Discount equal to or greater than the Minimum Discount but for a Reset Period shorter than the entire remaining term to maturity of the Prepaid Energy Sales Agreement and (ii) CCCFA has identified a potential assignee that has agreed to provide an Available Discount equal to or greater than the Minimum Discount for a Reset Period equal to the entire remaining term to maturity

of the Prepaid Energy Sales Agreement, then, at the request of CCCFA, MSES will reasonably cooperate with CCCFA to cause MSES's interest (or the interest of MSES's affiliate, if applicable) in the Prepaid Energy Sales Agreement, the Re-Pricing Agreement, the MSES Commodity Swap, the MSES Custodial Agreement and the Debt Service Account Investment Agreement, in each case with a term that extends past the then-current Interest Rate Period to which MSES or any affiliate is a party and all agreements related to any of the foregoing to be novated to a replacement seller. Any such novation requires a Rating Confirmation (for any Bonds required to be redeemed on the first Mandatory Purchase Date following the effective date of such novation) and the consent of the Commodity Swap Counterparty. Upon any such novation, neither MSES nor Morgan Stanley will have any obligations (contingent or otherwise) or be required to make any payment under any of the transaction documents described above, the Morgan Stanley Guarantee or otherwise, other than obligations that would have existed or payments that would have been required (or guaranteed) had the Prepaid Energy Sales Agreement terminated as of the end of the last Reset Period that commenced prior to such novation (the *"Assignment Payment"*).

Termination

CCCFA will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

- MSES's failure to pay when due any amounts owed to CCCFA pursuant to the Prepaid Energy Sales Agreement within two business days after receiving notice of a late payment, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;

- MSES's insolvency or bankruptcy;

- any representation or warranty made by MSES in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made; or

- any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results or would result in the performance of any obligation of MSES to deliver gas or CCCFA to receive gas under the Prepaid Energy Sales Agreement being prohibited or unlawful.

MSES will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

- CCCFA's failure to pay when due any amounts owed to MSES within five business days after receiving notice of a late payment;

- CCCFA's insolvency or bankruptcy;

- any representation or warranty made by CCCFA in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made;

- any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results

or would result in the performance of any obligation of MSES to deliver gas or CCCFA to receive gas under the Prepaid Energy Sales Agreement being prohibited or unlawful;

- if each of the Project Participants makes a Remarketing Election for a Reset Period; or
- if all of the Power Supply Contracts have been terminated or are otherwise no longer in effect.

The Prepaid Energy Sales Agreement will automatically terminate prior to the expiration of the term under the following circumstances:

- the failure to replace, within 120 days, either CCCFA Commodity Swap or the MSES Commodity Swap if CCCFA Commodity Swap is terminated for any reason or termination occurs automatically under CCCFA Commodity Swap as a result of an event of default or a termination event thereunder;
- the MSES Commodity Swap is terminated by the Commodity Swap Counterparty or termination occurs automatically as a result of an event of default where MSES is the defaulting party or a termination event where MSES is the sole affected party and, except for certain events of default and termination events for which the replacement period does not apply, either CCCFA Commodity Swap or the MSES Commodity Swap is not replaced within 120 days;
- the failure to replace, within 120 days, the MSES Commodity Swap or CCCFA Commodity Swap if the MSES Commodity Swap has been terminated for a reason other than as described above;
- a Failed Remarketing has occurred;
- both (a) Morgan Stanley has delivered a termination notice of the Morgan Stanley Guarantee, and (b) no novation of the Prepaid Energy Sales Agreement has been effected (as described under THE PREPAID ENERGY SALES AGREEMENT—*Assignment*" above) prior to the end of the Initial Reset Period or the then-current Reset Period during which such termination notice was delivered, in which case the Prepaid Energy Sales Agreement will terminate as of the end of the Initial Reset Period or the then-current Reset Period, as applicable;
- the Morgan Stanley Guarantee ceases to be in full force or effect or is declared to be null and void or Morgan Stanley contests the validity or enforceability of the Morgan Stanley Guarantee; *provided* that, for avoidance of doubt, no such event will occur as a consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding; or
- the occurrence of a Remarketing Non-Default Termination Event (as described under "THE PREPAID ENERGY SALES AGREEMENT—*Remarketing Non-Default Termination Event*" above) and either (a) CCCFA and MSES fail to take the remedial actions required by the Prepaid Energy Sales Agreement or (b) CCCFA has not received an Opinion of Bond

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 Participants under the Power Supply Contracts (the *"Put Receivables"*). CCCFA is required to sell and MSES is required to purchase Put Receivables under the circumstances described below under *"Put Receivables."* In addition, under certain circumstances described below under *"Call Receivables,"* MSES has the right to purchase the Call Receivables.

Put Receivables. Upon a payment default by any Project Participant under its Power Supply Contract, CCCFA shall put to MSES and MSES shall purchase Put Receivables with a face value up to the Maximum Monthly Amount with respect to each Project Participant. CCCFA shall exercise its put option by delivering notice (the *"Put Option Notice"*) to MSES on the 21st day of the Month (or, if the 21st is not a business day, then on the next business day of the Month) in which the relevant payment default occurs.

The Put Option Notice shall include a description of the Put Receivables (including the relevant Project Participant, aging information and face amount of the Put Receivables) to be sold to MSES (collectively, the "*Put Identified Receivables"*).

"*Maximum Monthly Amount"* means, with respect to each Project Participant, (i) if the Outstanding Put Receivables in respect of such Project Participant exceeds zero, the Maximum Amount for such Project Participant, and (ii) otherwise the Maximum Amount less the Maximum Amount Holdback.

"*Maximum Amount"* means, with respect to each Project Participant, the amount set forth on a schedule attached to the Receivables Purchase Provisions (which amount has been calculated to equal the maximum consecutive two months of payments by each Project Participant, assuming a Contract Price of $[___]/MWh, reduced by the amount of each purchase of Put Receivables by MSES with respect to a Project Participant, and reinstated to the extent of payments received by MSES from such Project Participant in respect of such Put Receivables).

"*Maximum Amount Holdback"* means, with respect to each Project Participant, the amount such Project Participant would have been required to pay in the Month following an initial payment default under its Power Supply Contract for Gas delivered during the Month in which an initial payment default occurs if the Contract Price for such Month had been determined using an Index Price (as defined under its Power Supply Contract) for such Month equal to the Fixed Price (as defined under the CCCFA Commodity Swap) for such Month.

"*Outstanding Put Receivables*" means, in respect of any Project Participant, Put Receivables that have been sold to MSES pursuant to the Receivables Purchase Provisions, together with any interest accrued thereon pursuant to the Receivables Purchase Provisions, less any such Put Receivables and interest thereon that has been previously paid to or repurchased from MSES.

Call Receivables. If (i) one or more Project Participants defaults on its obligation to make any payment under its Power Supply Contract, and (ii) as of the next business day after the payment default by a Project Participant, a Swap Payment Deficiency is projected to exist with respect to CCCFA Commodity Swap, then on such business day, CCCFA shall deliver a written offer (a *"Call Receivables Offer"*) to sell to MSES sufficient Call Receivables (such amount, less any undisputed amounts owed by CCCFA to the Project Participants, the *"Call Receivables Amount"*) to fund the Swap Payment Deficiency. No later than one business day following MSES's receipt of a Call Receivables Offer, MSES may elect, in its discretion, to purchase the Call Receivables referenced in the Call Receivables Offer by delivering a written notice (a *"Call Option Notice"*) to CCCFA or the Trustee of MSES's intent to purchase such Call Receivables. If MSES does not deliver a Call Option Notice to the Trustee on or before the business day following MSES's receipt of a Call Receivables Offer, MSES will be deemed to have elected not to purchase the referenced Call Receivables. The Trustee's obligation to offer to sell such Call Receivables is subject to the condition that all of the representations and warranties made by MSES at the time of execution and delivery of the Prepaid Energy Sales Agreement be true and correct on each day that the Trustee is required to offer to sell Call Receivables.

THE RE-PRICING AGREEMENT

Set forth below is a summary of certain provisions of the Re-Pricing Agreement. This summary does not purport to be a complete description of the terms and conditions of the Re-Pricing Agreement and accordingly is qualified by reference to the full text thereof.

General

On the Initial Issue Date of the Bonds, CCCFA and the Energy Supplier will enter into a Re-Pricing Agreement (the *"Re-Pricing Agreement"*), which provides for (a) the determination of Energy Delivery periods subsequent to the initial Delivery Period that corresponds to the Initial Interest Rate Period on the Bonds (*"Reset Periods"*) and (b) the calculation of the amount of the discount (as a percentage) that is available (the *"Available Discount Percentage"*) for sales of Energy to the Project Participant during each Reset Period.

The initial delivery period under the Prepaid Energy Sales Agreement begins on the first day of _____ 20__ and ends on the last day of _____ 20__ and the first Reset Period is expected to begin on the first day of _____ 20__.

Remarketing Election

In the event that the Available Discount for any Reset Period is less than the Minimum Monthly Discount specified in the Power Supply Contract, the Project Participant may elect not to take Prepaid Energy during the Reset Period and to have Base Energy remarketed for the duration of the Reset Period (a *"Remarketing Election"*) by giving notice of such election to CCCFA, the Energy Supplier and the Trustee. Any Base Energy covered by a Remarketing Election will be remarketed in accordance with the provisions of the Indenture and the Prepaid Energy Sales Agreement. In the event that both Project Participants make a Remarketing Election with respect to any Reset Period, MSES will have the option to terminate the Prepaid Energy Sales Agreement. If MSES exercises this option, the Termination Payment will be payable under the Prepaid Energy Sales Agreement. See "THE PREPAID ENERGY SALES AGREEMENT — Remarketing" and "— Early Termination."

THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY

Set forth below is certain information regarding the Energy Supplier, MSCG and Morgan Stanley that has been obtained from such persons and other sources believed to be reliable. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Energy Supplier, MSCG or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.

MSES. The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The FERC has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services. Like all other natural gas marketers, the Energy Supplier has blanket authorization to sell wholesale Energy at market-based rates. The Energy Supplier is not registered with the CFTC in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the Energy Supplier Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees described herein.

MSCG. MSCG is a direct, wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which is a direct, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC. The payment obligations of MSCG under the Debt Service Account Investment Agreement are guaranteed by Morgan Stanley under the Morgan Stanley Investment Agreement Guarantee.

Morgan Stanley. Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides a wide variety of products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley is a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the U.S., and its principal offices in London, Tokyo, Hong Kong and other world financial centers. Morgan Stanley's principal executive offices are at 1585 Broadway, New York, New York 10036, and its telephone number is (212) 761-4000.

The senior unsecured long-term debt of Morgan Stanley is rated "A1" by Moody's, "BBB+" by S&P, and "A" by Fitch.

Morgan Stanley has provided the Morgan Stanley Guarantee to CCCFA pursuant to which it guarantees the Energy Supplier's payment obligations under the Prepaid Energy Sales Agreement and the Interest Rate Swap. Morgan Stanley has also provided the Morgan Stanley Commodity Swap Guarantee to the Commodity Swap Counterparty pursuant to which it guarantees the Energy Supplier's payment obligations to the Commodity Swap Counterparty under the Energy Supplier Commodity Swap. Under no circumstance is the Energy Supplier or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.

THE POWER SUPPLY CONTRACTS

Set forth below is a summary of certain provisions of the Power Supply Contracts during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Power Supply Contracts and is qualified by reference to the full text of the Power Supply Contracts.

General

Under each Power Supply Contract, CCCFA has agreed to sell and deliver to the Project Participant, and the Project Participant has agreed to purchase and receive from CCCFA at the delivery point, quantities of EPS Compliant Energy, which shall be comprised of Assigned Energy and other EPS Compliant Energy delivered to CCCFA by the Energy Supplier under the Prepaid Energy Sales Agreement.

Each Power Supply Contract will remain in full force and effect for a primary term ending at the end of the Delivery Period under the Prepaid Energy Sales Agreement; *provided, however*, that if the Prepaid Energy Sales Agreement is terminated, the Power Supply Contract will terminate on the Termination Date.

For information regarding the Project Participants, see APPENDIX A.

Pricing Provisions

Contract Price. For each MWh of Prepaid Energy delivered to Purchaser, Purchaser shall pay CCCFA the applicable Contract Price. *"Contract Price"* means (i) for Assigned Energy during the Initial EPS Energy Period, (A) the Assigned Fixed Price minus (B) the Monthly Discount; and (ii) for Assigned Energy after the Initial EPS Energy Period, (A) the Day-Ahead Average Price for the Month in which Energy is delivered, minus (B) the Monthly Discount. The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products. The *"Initial EPS Energy Period"* is defined in the Prepaid Energy Sales Agreement as the period corresponding the term of the assignments made by the Project Participants under the Initially Assigned PPAs. The *"Assigned Fixed Price"* during such period is defined as the fixed price payable under the applicable Assigned PPA.

If Base Energy is required to be delivered and remarketed pursuant to the Prepaid Energy Sales Agreement, the Energy Supplier will remarket such Base Energy at a price, inclusive of applicable fees, at a price not less than the Contract Price. See "THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*."

Through the Clean Energy Project, the Project Participants anticipate realizing a discount to market Energy prices. No assurance can be given as to the total actual discounts the Project Participants will realize.

Assignment of Power Purchase Agreements

General. Concurrently with the execution of the Power Supply Contract, the Project Participants will assign the Initial Assigned Rights and Obligations to MSCG and MSCG will deliver the Assigned Energy to MSES for delivery under the Prepaid Energy Sales Agreement.

Commencing one year prior to the expiration of any EPS Energy Period, or otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, each Project Participant shall exercise commercially reasonable efforts to assign the Assigned Rights and Obligations under one or more Assigned PPAs, and MSCG has the right to consent to, pursuant to which the Project Participant is purchasing EPS Compliant Energy and associated attributes, and MSCG will be obligated to sell and deliver Assigned Energy it receives under all Assigned Rights and Obligations to the Energy Supplier pursuant to the Energy Management Agreement, and the Energy Supplier will be obligated to deliver such EPS Compliant Energy and associated attributes to CCCFA pursuant to the Prepaid Energy Sales Agreement.

Failure to Obtain EPS Compliant Energy. To the extent an EPS Energy Period terminates or expires and the Project Participant and the Energy Supplier have been unable to obtain EPS Compliant Energy for delivery, then the Energy Supplier shall remarket the Base Energy pursuant to the Prepaid Energy Sales Agreement, the obligations of the Project Participant and the Energy Supplier described under this heading shall continue to apply and the Project Participant may not make any new commitment to purchase Priority Energy during such a remarketing.

Billing and Payment

Not later than ten days following the end of the month during the Delivery Period, CCCFA must provide a monthly billing statement of the amount due for Energy. The due date for payment by the Project Participant will be (i) the 20th day of the month following the month of delivery or (ii) the 10th day following the Project Participant's receipt of the billing statement (or if either of such days is not a business day, the preceding business day). If the Project Participant disputes the appropriateness of any charge or calculation in any billing statement, the Project Participant, within the time provided for payment, must notify CCCFA of the existence of and basis for such dispute and must pay all amounts billed by CCCFA, including any amounts in dispute. If it is ultimately determined that the Project Participant did not owe the disputed amount, CCCFA must pay the Project Participant the disputed amount plus interest.

Annual Refunds

CCCFA has agreed to provide annual refunds to the Project Participant from amounts available for distribution pursuant to the Indenture. In determining the amount of such refunds, CCCFA may reserve such funds as may be required under the terms of the Indenture or as it deems reasonably necessary and appropriate to cover anticipated costs and expenses to be incurred in the next succeeding bond year, with certain limitations.

Covenants of the Project Participant

Operating Expense. The Project Participant covenants (a) to make the payments on its part due under the Power Supply Contract from the revenues of its electric utility system, and only from such revenues, as an item of operating expenses and a cost of purchase Energy and (b) that in any future bond issue, swap, or other financial transaction undertaken in connection with its electric system, it will not pledge or encumber its revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under the Power Supply Contract.

Maintenance of Rates and Charges. The Project Participant has covenanted and agreed that it will establish, maintain, and collect rates and charges for its electric utility system so as to provide revenues sufficient, together with all available electric system revenues, to enable it to pay to CCCFA all amounts payable under its Power Supply Contract and to maintain required reserves.

Qualifying Use. The Project Participant has agreed that it will (a) provide such information with respect to its electric utility system as may be requested by CCCFA in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as tax counsel to CCCFA may provide from time to time that are reasonably necessary to enable CCCFA to maintain the tax-exempt status of interest on the Bonds. Without limiting the foregoing, the Project Participant has further agreed to sell or otherwise use the Energy purchased under the Power Supply Contract (a) in a "qualifying use" as defined in the applicable U.S. Treasury Regulation, (b) in a manner that will not result in any private business use of that Energy within the meaning of Section 141 of the Code, and (c) consistent with its Federal Tax Certificate (collectively, the *"Qualifying Use Requirements"*).

In the event that the Project Participant remarkets the Energy it receives under the Power Supply Contract in a manner that does not comply with the Qualifying Use Requirements due to fluctuations in its commodity needs, the Project Participant agrees to exercise commercially reasonable efforts to use the

proceeds of such remarketing to purchase Energy (other than Priority Energy, which are described below) for use in compliance with such Requirements. The Project Participant further agrees to provide quarterly reports to CCCFA with respect to the quantity of proceeds from sales of Energy that were sold in a transaction that does not comply with the Qualifying Use Requirements and that have not been remediated by applying such proceeds to purchase Energy that are used in compliance with the Qualifying Use Requirements. The amount of any such unremediated proceeds will be entered on the ledger system maintained by J. Aron under the Energy Purchase, Sale and Service Agreement.

Priority Energy. The Project Participant agrees to purchase and receive the Base Energy and Assigned Quantities to be delivered under the Power Supply Contract (a) in priority over and in preference to all other Energy available to it that are not Priority Energy; and (b) on at least a *pari passu* and non-discriminatory basis with other Priority Energy. For purposes of this covenant and during the Delivery Period, *"Priority Energy"* means Base Energy and Assigned Quantities that (a) the Project Participant is obligated to take under a long-term agreement or (b) with respect to Energy, Energy that is generated using capacity that was constructed using the proceeds of tax-exempt bonds, notes, or other obligations.

Delivery Points; Title and Risk of Loss

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 Schedule. All other Assigned Energy will be delivered pursuant to the terms of the applicable Assignment Agreement. Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Title. Title to and risk of loss of the Prepaid Energy delivered under the Power Supply Contract shall pass from the CCCFA to the Project Participant at the applicable Assigned Delivery Point. The transfer of title and risk of loss for Assigned Energy shall be in accordance with the applicable Assignment Agreement.

Failure to Perform.

To the extent that quantities of Assigned Energy are not delivered to a Project Participant for reasons other than force majeure, equivalent quantities of Base Energy are required to be remarketed by MSES at a net price not less than the Contract Price. Neither the Project Participant nor CCCFA has any liability to one another for any failure to take or deliver Assigned Energy, except as described under "— Assignment of Power Purchase Agreements."

Remarketing of Energy

In the event the Project Participant does not require all or any portion of the Base Energy or Assigned Quantities to meet its requirements for Energy for any hour that it is obligated to purchase under its Power Supply Contract as a result of (i) insufficient demand by its retail customers, or (ii) a change in Law, the Project Participant may request that the Energy Supplier sell such portion of Base Energy or Assigned Energy to (a) another Municipal Utility or (b) if necessary, another purchaser. Under the Prepaid Energy Sales Agreement, CCCFA arranges for sales through the Energy Supplier in accordance with the remarketing provisions and procedures set forth in that agreement. If the Energy Supplier successfully makes such a sale or sales, CCCFA must credit against the amount owed by the Project Participant to

CCCFA the amount received from the Energy Supplier, such credit not to exceed the Contract Price for the Energy so sold. See "THE PREPAID ENERGY SALES AGREEMENT — Energy Remarketing."

Force Majeure

Except with regard to a party's obligation to make payments under the Power Supply Contract, neither party shall be liable to the other for failure to perform its obligations under the Power Supply Contract to the extent such failure was caused by an event of "*Force Majeure*" (as defined in APPENDIX B).

Default

Each of the following is a default under the Power Supply Contract:

(a) Any representation or warranty made by a party in the Power Supply Contract shall prove to have been incorrect in any material respect when made; and

(b) A party fails to perform, observe or comply with any covenant, agreement or term contained in the Power Supply Contract, and such failure continues for more than thirty days (in the case of the CCCFA) or more than fifteen days (in the case of the Project Participant) following the receipt of written notice thereof.

In addition, each of the following is a default by the Project Participant under the Power Supply Contract:

(a) Failure by the Project Participant to pay when due any amounts owed to CCCFA under the Power Supply Contract, subject to certain grace periods;

(b) The insolvency or bankruptcy of the Project Participant; and

(c) The Project Participant fails to establish, maintain, or collect rates or charges adequate to provide revenues sufficient to enable the Project Participant to pay all amounts due to CCCFA under the Power Supply Contract.

Upon the occurrence of a default by the Project Participant described in (b) above, the Power Supply Contract will automatically terminate and all amounts due to the non-defaulting party will be immediately due and payable. Upon the occurrence of the other defaults described above, the non-defaulting party may terminate the Power Supply Contract and/or declare all amounts due to it to be immediately due and payable. During the existence of a default, the non-defaulting party may exercise all other rights and remedies available to it at law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of the Power Supply Contract.

In addition to the remedies described above, during the existence of any default by the Project Participant, CCCFA may suspend its performance under the Power Supply Contract and discontinue the supply of all or any portion of the Energy otherwise to be delivered to the Project Participant under the Power Supply Contract.

If CCCFA exercises its right to discontinue Energy deliveries to the Project Participant, such service may only be reinstated, as determined by CCCFA, upon (a) payment in full by the Project

Participant of all amounts then due and payable under its Power Supply Contract and (b) unless otherwise agreed to by CCCFA, payment in advance by the Project Participant at the beginning of each month (for such time period as CCCFA deems appropriate) of amounts estimated by CCCFA to be due from the Project Participant for the future delivery of Energy for such month. If the Project Participant fails to accept the Energy tendered, CCCFA has the right to sell the Energy to third parties.

In the event of any default, the non-defaulting party may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance.

Assignment

The provisions of the Power Supply Contract are binding on the successors and assigns of such contract. Neither party may assign the Power Supply Contract to another party without the prior written consent of the other party, except that CCCFA may assign its interests to secure its obligations under the Indenture. Prior to assigning all or any part of its interest in the Power Supply Contract, the Project Participant is required to deliver to CCCFA a Rating Confirmation from each rating agency then rating the Bonds. Any applicable Assignment Agreement will terminate concurrent with the assignment of the Power Supply Contract.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

[To be updated and confirmed]

General

CCCFA is a joint powers authority formed pursuant to the Act and the joint powers agreement ("the JPA Agreement") made among those public agencies which are its members. CCCFA was incorporated and organized in 2021 pursuant to by the members thereof, those being the Project Participant (Marin Clean Energy), Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (each, a "*Founding Member*" and, together with any members which may later be added as parties to the JPA Agreement, a "*Member*").

Each Member is a community choice aggregator, and a public agency as defined in the Act, which operates a community choice aggregation program with the authority to group retail Energy customers to solicit bids, broker, and contract for Energy and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of Energy and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs.

CCCFA was formed for, among other purposes, the purpose of financing energy prepayments which can be financed with tax advantaged bonds for the benefit of its Members.

Powers and Authority

Under the provisions of the Act, CCCFA has all of the powers common to the Members, and any and all power in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations, including: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of

any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations (a "*Prepayment Project*"). CCCFA shall have the power to issue, incur, sell and deliver bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects.

Under the provisions of the JPA Agreement and the Act, CCCFA has (among others) the following powers:

(a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;

(b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);

(c) to employ agents and employees;

(d) to acquire, manage, maintain or operate any building, works or improvements;

(e) to acquire, hold, lease or dispose of property;

(f) to incur debts (including without limitation through the issuance or incurrence of bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);

(g) to sue and be sued in its own name;

(h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;

(i) to receive, collect, invest and disburse moneys;

(j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

(k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;

(l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of the JPA Agreement.

The JPA Agreement shall continue in full force and effect until terminated as provided in therein; *provided, however*, the JPA Agreement cannot be terminated while either (a) any bonds of CCCFA,

including the Bonds, remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any bonds.

Governance and Management

Board of Directors. CCCF is governed by a Board of Directors (the "*Board*") consisting of one director for each Founding Member. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA. The Board may appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers. The General Manager would be responsible for the day-to-day operation and management of CCCFA. The names of the current directors of CCCFA are listed on the roster page at the front of this Official Statement.

Management. CCCFA's current management team and their backgrounds are set forth below.

[Bios to come]

Future CCCFA Projects

[To be updated] [CCCFA has no other bonds outstanding but may issue future bonds to purchase Prepaid Energy supplies for sale to participating municipal utilities, with the revenues from such sales pledged to the payment of such bonds. Such revenues will not be pledged, nor may such revenues be used, to pay amounts due with respect to the Bonds.

In furtherance of its corporate and public purposes, CCCFA intends to acquire and finance supplies of Energy on a prepaid basis for sale to _____ and other public utility systems. CCCFA is currently developing additional Clean Energy Projects under transaction and financing structures that are expected to be generally similar to the structure of the Clean Energy Project. CCCFA can give no assurance as to the timing or terms of these projects or that they will be completed. A range of factors that are outside of the control of CCCFA, including the final negotiation of transaction documents, the approval of commodity supply contracts by the prospective project participants, changes in market prices and rates, the receipt of bond ratings, and other factors could result in these transactions not being completed.

Any additional Clean Energy Projects that may be undertaken by CCCFA will be separate and distinct transactions, and the bonds issued to finance these projects will be payable solely from the commodity sales and other revenues pledged for their payment. In no event will the Revenues and Trust Estate pledged to the payment of the Bonds be used to pay any other bonds of CCCFA.]

Separate Obligations

THE BONDS, ANY FUTURE BONDS THAT MAY BE ISSUED BY CCCFA AND ANY FUTURE CONTRACTS THAT CCCFA MAY ENTER INTO TO ACQUIRE ADDITIONAL ENERGY OR ENERGY ARE AND WILL BE SEPARATE AND DISTINCT OBLIGATIONS OF CCCFA. ANY FUTURE BONDS OR CONTRACTS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES PLEDGED BY THE INDENTURE TO THE PAYMENT OF THE BONDS, AND THE BONDS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES DERIVED FROM ANY FUTURE PROJECT, CLEAN ENERGY PROJECT OR CONTRACT OF CCCFA.

Limited Liability

CCCFA DOES NOT HAVE THE POWER TO LEVY AD VALOREM PROPERTY TAXES. ALL BONDS ISSUED BY CCCFA ARE PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM ITS ACTIVITIES PURSUANT TO ITS STATUTORY PURPOSES AND POWERS AND IN ACCORDANCE WITH THE APPLICABLE FINANCING DOCUMENTS. THE BONDS ARE PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE PLEDGED PURSUANT TO THE INDENTURE.

COMMUNITY CHOICE AGGREGATORS

Limited Liability.

Section 331.1 of the Public Utilities Code provides for the establishment of "community choice aggregators" (a "*CCA*"). A CCA may be established by any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a community-wide Energy buyers' program, and by any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Joint Powers Act, provided in either case that the entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003. "Local publicly owned electric utility" means a municipality or municipal corporation operating as a "public utility" and certain municipal utility districts, public utility districts, irrigation districts, or joint powers authorities that include one or more of these agencies and that owns generation or transmission facilities or furnishes electric services over its own or its members' electric distribution systems.

Community Choice Service Model.

Once a community forms or joins a CCA, the CCA is the default energy provider in that community. The CCA procures energy for customers in that community, but the investor-owned utility for that community continues to provide transmission, distribution and billing services to customers. Revenues from the sale of energy by the CCA are delivered by the investor-owned utility to the CCA as they are received over the course of the billing period.

Service Contract Requirements and Registration with the Public Utilities Commission.

CCAs are required to have an operating service agreement with the applicable investor-owned utility prior to furnishing electric service to consumers within its jurisdiction. The service agreement must include performance standards that govern the business and operational relationship between the CCA and the investor-owned utility. CCAs are also required to register with the California Public Utilities Commission (the "*PUC*"), which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters. Once notified of a CCA program, the applicable investor-owned utility is required to transfer all applicable accounts to the CCA within a 30-day period from the date of the close of the utility's normally scheduled monthly metering and billing process.

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

Set forth below is a summary of certain provisions of the Commodity Swaps. This summary does not purport to be a complete description of the terms and conditions of the Commodity Swaps and accordingly is qualified by reference to the full text of the Commodity Swaps.

General

CCCFA has entered into the CCCFA Commodity Swap under which, following the Initial EPS Energy Period, CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for notional quantities that correspond to the quantities of Prepaid Energy under the Prepaid Energy Sales Agreement. Under the CCCFA Commodity Swap, for each calendar month that the relevant floating price of Energy is greater than the fixed price specified in an CCCFA Commodity Swap, CCCFA will be obligated to pay to the Commodity Swap Counterparty an amount equal to (x) the difference between the floating price and the fixed price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the fixed price specified in the CCCFA Commodity Swap is greater than the relevant floating price of Prepaid Energy for a month, the Commodity Swap Counterparty will be obligated to pay CCCFA an amount equal to (x) the difference between the fixed price and floating price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the relevant floating price for a calendar month is equal to the specified fixed price, no payment will be owed by either party to the other under the CCCFA Commodity Swaps.

The Energy Supplier has entered into a comparable Energy Supplier Commodity Swap with the same Commodity Swap Counterparty under which the Energy Supplier pays a fixed Energy price and receives a floating Energy price for the same notional quantities at the same pricing points.

Each Commodity Swap has an initial term that commences on day following the Initial EPS Energy Period and extends for two calendar months. The Commodity Swaps have rolling two-month terms that renew automatically upon the payment due date of each monthly net settlement amount due thereunder through the term of the Delivery Period under the Prepaid Energy Sales Agreement, unless a Termination Date occurs under the Prepaid Energy Sales Agreement.

Form of Commodity Swaps

The Commodity Swaps have been entered into as a confirmation under a 2002 ISDA Master Agreement with certain amendments and elections under the Master Agreement that have been agreed to by the parties.

Payment

For each month of scheduled deliveries and notional amounts following the Initial EPS Energy Period, each party with a net obligation under a Commodity Swap (based on the relative values of the fixed price and relevant index prices) will pay that net obligation to the other party. Payments, if any, under the Commodity Swaps are due in the calendar month following the month to which the applicable day-ahead market prices relate, on the 24th day of the month (or preceding business day) in the case of the Energy

Supplier Commodity Swap and on the 25th day of the month (or next business day) in the case of the CCCFA Commodity Swap.

Early Termination

Each of the Commodity Swaps will be subject to early termination under certain circumstances. Early termination can be triggered automatically or upon the election by the non-defaulting party as summarized below.

No settlement or other termination payment (other than Unpaid Amounts) will be due to any party as a result of any early termination of any Commodity Swap.

Automatic Termination of Commodity Swaps. Each of the following events would result in the automatic termination of the CCCFA Commodity Swap and the Energy Supplier Commodity Swap:

- the termination of the Prepaid Energy Sales Agreement for any reason, in which case the Commodity Swaps will terminate automatically on such date;

- a party's failure to pay amounts when due under an CCCFA Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within three business days after notice; and

- delivery by CCCFA of a notice of termination of an CCCFA Commodity Swap results in the automatic termination of the Energy Supplier Commodity Swap, and delivery by the Energy Supplier of a notice of termination of an Energy Supplier Commodity Swap results in the automatic termination of the CCCFA Commodity Swap.

Elective Termination of CCCFA Commodity Swap. Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate a CCCFA Commodity Swap if it is not cured within the applicable cure period:

- a party becomes subject to certain insolvency events in the manner specified in the CCCFA Commodity Swap;

- a credit support default with respect to a Commodity Swap Counterparty;

- a reduction below certain specified minimum ratings in the credit rating assigned by the applicable rating agency to the senior, unsecured long-term debt obligations (not supported by third party credit enhancements) of the Commodity Swap Counterparty (the *"Counterparty Credit Rating"*);

- amendment of the Indenture in breach of the Commodity Swap Counterparty's consent rights thereunder;

- the amendment, without the Commodity Swap Counterparty's consent, of certain provisions of the Prepaid Energy Sales Agreement relating to the termination or assignment thereof, or that would affect termination of the Commodity Swap; and

- CCCFA fails to promptly exercise its right to suspend all commodity deliveries under a Power Supply Contract to any Project Participant that fails to pay when due any amounts owed to CCCFA thereunder.

Elective Termination of the Energy Supplier Commodity Swaps. Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate an Energy Supplier Commodity Swap if it is not cured within the applicable cure period:

- if a party becomes subject to certain insolvency events in the manner specified in the Energy Supplier Commodity Swap;

- a credit support default with respect to the Commodity Swap Counterparty or the Energy Supplier;

- any reduction in the Counterparty Credit Rating (as defined above) below certain specified minimum ratings;

- the amendment, without the Commodity Swap Counterparty's consent, of (a) certain provisions of the Prepaid Energy Sales Agreement relating to the termination or assignment thereof, or that would affect terminations of the Commodity Swaps or (b) certain provisions of the Receivables Purchase Provisions relating to the purchase of Receivables by the Energy Supplier; and

- a party's failure to pay amounts when due under an Energy Supplier Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within one business day after notice.

Other Listed Events. The Commodity Swaps contain other listed events (including breach or repudiation, misrepresentation, illegality and certain tax and credit events) that do not give CCCFA, the Energy Supplier or a Commodity Swap Counterparty the right to designate an early termination date, but which permit the non-defaulting party or the affected party to pursue such equitable remedies, including specific performance, as may be available.

Custodial Agreements

The Energy Supplier will enter into a Custodial Agreement, dated as of the Initial Issue Date (each, a *"Energy Supplier Custodial Agreement"*), with the Commodity Swap Counterparty and [_____], as Trustee and as custodian (in such capacity, the *"Custodian"*), to administer payments under the Energy Supplier Commodity Swaps. CCCFA will enter into a Custodial Agreement, dated as of the Initial Issue Date (each, an *"CCCFA Custodial Agreement,"* and together with the Energy Supplier Custodial Agreement, the *"Custodial Agreements"*), with the Commodity Swap Counterparty and the Custodian, to administer payments under the CCCFA Commodity Swap. The Custodial Agreements contain provisions designed to mitigate risks to CCCFA and Bondholders resulting from a failure of the Commodity Swap Counterparty to make payments to CCCFA under the CCCFA Commodity Swap, and mitigate risks to the Energy Supplier resulting from a failure of the Commodity Swap Counterparty to make payments to the Energy Supplier under the Energy Supplier Commodity Swap.

Payments made by the Energy Supplier under the Energy Supplier Commodity Swap will be made to a custodial account maintained by the Custodian under the Energy Supplier Custodial Agreements. Such amounts will not be released until the Custodian has received confirmation that the amount payable to CCCFA by the Commodity Swap Counterparty under the CCCFA Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under an CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that the Energy Supplier paid under the Energy Supplier Commodity Swap (which such amount is held in custody) to the Trustee for deposit in the Revenue Fund and that payment will be treated as a Commodity Swap Receipt. Additionally, if the Energy Supplier Commodity Swap terminates, the Energy Supplier will continue to make payments to the custodial account as if such Energy Supplier Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be used to ensure that CCCFA receives deposits in the Revenue Fund as described in the preceding sentence in the event that the Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap.

Payments made by CCCFA under the CCCFA Commodity Swap will be made to a custodial account maintained by the Custodian under the CCCFA Custodial Agreement. The amount in the custodial account will not be released until the Custodian has received confirmation that the amount payable to the Energy Supplier by the Commodity Swap Counterparty under the Energy Supplier Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under the Energy Supplier Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that CCCFA paid under the CCCFA Commodity Swap (which such amount is held in custody) to the Energy Supplier. Additionally, if a CCCFA Commodity Swap terminates, CCCFA will continue to make payments to the custodial account as if the CCCFA Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be withdrawn by the Custodian and paid to the Energy Supplier.

THE COMMODITY SWAP COUNTERPARTY

Set forth below is certain information regarding the Commodity Swap Counterparty. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Commodity Swap Counterparty obligated to pay any amount owed in respect of the Bonds.

[TO COME]

CONTINUING DISCLOSURE

CCCFA. CCCFA will enter into a Continuing Disclosure Undertaking (the "*Undertaking*") for the benefit of the beneficial owners of the Bonds to send certain information annually and to provide notice of certain events to the MSRB's EMMA system for municipal securities disclosures, pursuant to the requirements of Section (b)(5) of Rule 15c2-12 ("*Rule 15c2-12*") adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

A failure by CCCFA to comply with the Undertaking will not constitute an event of default under the Indenture or the Bonds and Beneficial Owners of the Bonds shall only be entitled to the remedies for any such failure described in the Undertaking. A failure by CCCFA to comply with the Undertaking must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price.

The Undertaking and commitments of CCCFA described under this heading and in APPENDIX D hereto to furnish the above-described documents and information are agreements and commitments solely of CCCFA, and the Underwriter has no responsibility to ensure that CCCFA complies with any such Undertaking or commitment. In addition, the Underwriter makes no representation that any such documents or information will be furnished, or that any such documents or information so furnished will be accurate or complete, or sufficient for the purposes for which they may be used.

CCCFA has not previously entered into a continuing disclosure undertaking pursuant to Rule 15c2-12. [CCCFA has adopted a written policy that sets forth procedures for compliance with the federal tax and continuing disclosure requirements applicable to its bonds. The policy includes, among other things, procedures that are intended to promote CCCFA's compliance with the Undertaking.]

Project Participants. Pursuant to the Power Supply Contracts, the Project Participants have agreed to provide to CCCFA certain annual operating and financial information, which information will enable CCCFA to comply with the Undertaking. Failure of a Project Participants to provide such information is not a default under its Power Supply Contract, but any such failure entitles CCCFA to take such actions and to initiate such proceedings as shall be necessary to cause the Project Participant to comply with its undertaking as set forth in its Power Supply Contract.

LITIGATION

There are no legal proceedings pending against CCCFA relating to the issuance, sale or delivery of the Bonds which could adversely affect the Clean Energy Project. In addition, there is no litigation pending or, to the knowledge of CCCFA, threatened against or affecting CCCFA or in any way questioning or in any manner affecting the validity or enforceability against CCCFA of the Bonds, the Power Supply Contract, the Prepaid Energy Sales Agreement, the CCCFA Commodity Swaps, the Receivables Purchase Provisions, the Investment Agreements, the Custodial Agreements, the Indenture, or the pledge of the Trust Estate under the Indenture.

The Project Participants report that there is no litigation pending or, to their knowledge, threatened against it questioning or in any manner affecting the validity or enforceability of the Power Supply Contracts.

NO FINANCIAL STATEMENTS

CCCFA was formed in 2021, and consequently CCCFA has not yet produced audited financial statements. Pursuant to the Undertaking described under "CONTINUING DISCLOSURE" above, CCCFA has agreed to file its audited financial statements, commencing with its audited financial statements for its fiscal year ended _____, 2021, on the MSRB's EMMA system described above.

FINANCIAL ADVISOR

Public Financial Management, Inc. (the *"Financial Advisor"*), has served as financial advisor to CCCFA in connection with Clean Energy Project and the Bonds. Among other responsibilities, the Financial Advisor has provided advice and recommendations to CCCFA with respect to the structure, timing, terms of and similar matters relating to the Bonds, bond market conditions, costs of issuance and other matters relating to the Bonds and the Clean Energy Project. The Financial Advisor has also provided advice and recommendations to CCCFA, and has served as CCCFA's "qualified independent representative," with respect to the CCCFA Commodity Swaps. The Financial Advisor has reviewed this Official Statement, but has not audited, authenticated or otherwise verified the information set forth herein, and makes no guaranty, warranty or representation with respect to the accuracy and completeness of the information contained in this Official Statement. The Financial Advisor's fees are contingent upon the sale and delivery of the Bonds, and are based, in part, on the proceeds of the Bonds.

UNDERWRITING

Pursuant to the purchase contract relating to the Bonds between CCCFA and Morgan Stanley & Co. LLC, as the underwriter of the Bonds (the *"Underwriter"*), the Underwriter has agreed, subject to certain conditions to purchase the Bonds from CCCFA at an aggregate purchase price of $_____ (representing the principal amount of the Bonds, plus original issue premium of $_____, less Underwriter's discount of $_____). The obligation of the Underwriter to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract. The Underwriter is obligated to purchase all the Bonds if any are purchased. The Bonds may be offered and sold to certain dealers and others at prices lower than the initial offering prices, and such initial offering prices may be changed from time to time by the Underwriter. The Underwriter has no obligations other than those that are set forth in the purchase contract. The payment of the Bonds is not guaranteed by the Underwriter.

Morgan Stanley & Co. LLC has entered into a retail distribution arrangement with its affiliate Morgan Stanley Smith Barney LLC. As part of the distribution arrangement, Morgan Stanley & Co. LLC may distribute municipal securities to retail investors through the financial advisor network of Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Bonds.

Morgan Stanley & Co. LLC (together with its affiliates) is a full service financial institution engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Morgan Stanley & Co. LLC and its affiliates have provided, and may in the future provide, a variety of these services to CCCFA and to persons and entities with relationships with CCCFA, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own accounts and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of CCCFA (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with CCCFA. The

Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriter is not acting as financial advisor to CCCFA in connection with the Bonds or the offering or sale of the Bonds.

CERTAIN RELATIONSHIPS

The Energy Supplier, which is also the Receivable Purchaser, the Interest Rate Swap Counterparty and a party to the Energy Supplier Commodity Swap is a wholly owned indirect subsidiary of Morgan Stanley. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under the Morgan Stanley Guarantees. The Underwriter of the Bonds, Morgan Stanley & Co. LLC, is also a wholly owned subsidiary of Morgan Stanley.

Neither the Energy Supplier nor Morgan Stanley has guaranteed or is responsible for the payment of the Bonds. The obligations of the Energy Supplier and, by virtue of the Morgan Stanley Guarantees, Morgan Stanley are limited to those set forth in the Prepaid Energy Sales Agreement, the Energy Supplier Commodity Swap, the Interest Rate Swap and the Debt Service Account Investment Agreement (if the Energy Supplier or an affiliate is the Investment Agreement Provider). Neither the Energy Supplier nor Morgan Stanley takes any responsibility for the information set forth in this Official Statement other than the information set forth under the captions "THE CLEAN ENERGY PROJECT—Morgan Stanley Guarantees" and "THE ENERGY SUPPLIER AND MORGAN STANLEY".

RATING

Moody's Investors Service, Inc. is expected to assign a municipal bond rating of "___" to the Bonds.

CCCFA has furnished to each rating agency that is expected to rate the Bonds certain information, including information not included in this Official Statement, about CCCFA and the Bonds. Generally, a rating agency bases its ratings on that information and on independent investigations, studies and assumptions made by each rating agency. A securities rating is not a recommendation to buy, sell or hold securities. There is no assurance that a rating, once obtained, will continue for any given period of time or that it will not be revised downward or withdrawn entirely if, in the opinion of the rating agency, circumstances so warrant. Any such downward revision or withdrawal could have an adverse effect on the marketability or market price of the Bonds. CCCFA has not undertaken any responsibility after issuance of the Bonds to assure the maintenance of the ratings applicable thereto or to oppose any revision or withdrawal of such ratings.

TAX MATTERS

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is

excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX F hereto.

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Bonds which is excluded from gross income for federal income tax purposes and State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Bonds is the first price at which a substantial amount of such maturity of the Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Bonds accrues daily over the term to maturity of such Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Bonds. Beneficial Owners of the Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such Bonds in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) ("Premium Bonds") will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of 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, parties other than CCCFA and its appointed counsel, such as the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which CCCFA legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues, may affect the market price for, or the marketability of, the Bonds, and may cause CCCFA or the Beneficial Owners to incur significant expense.

APPROVAL OF LEGAL MATTERS

The validity of the Bonds and certain other legal matters are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA. A complete copy of the proposed form of the opinion of Bond Counsel is contained in APPENDIX E to this Official Statement.

Certain legal matters will be passed upon for CCCFA by Orrick, Herrington & Sutcliffe LLP; for the Project Participant by Chapman and Cutler LLP; for the Energy Supplier by its counsel, Haynes and Boone, LLP; for Morgan Stanley by its counsel, [_____]; and for the Underwriter by Nixon Peabody LLP.

CCCFA will receive an opinion from counsel to each Project Participant on the date of original delivery of the Bonds, to the effect that the Power Supply Contract of such Project Participant has been duly authorized, executed and delivered by the Project Participant and constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms. The enforceability of the Power Supply Contract may be limited by or subject to applicable bankruptcy, insolvency, moratorium, reorganization, other laws affecting creditors' rights generally and by general principles of equity, public policy and commercial reasonableness.

MISCELLANEOUS

Any statements in this Official Statement involving matters of opinion, estimates or forecasts, whether or not expressly so stated, are intended as such and not as representations of fact. The Appendices attached hereto are an integral part of this Official Statement and must be read in conjunction with the foregoing material. This Official Statement is not to be construed as a contract or agreement between CCCFA and the purchasers or owners of the Bonds.

The delivery of this Official Statement has been duly authorized by the Board of Directors of CCCFA.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By _____

By: _____

APPENDIX A

EAST BAY COMMUNITY ENERGY

General

East Bay Community Energy ("*EBCE*") 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.

EBCE was originally created in 2016 under the name "East Bay Community Energy Authority" as a CCA in California pursuant to a Joint Powers Agreement, as amended, by and among the cities and towns participating in EBCE and named therein. EBCE began providing service to customers in 2018.

Originally created to serve communities in Alameda County, EBCE now serves 15 member communities across two Bay Area counties: Alameda County and San Joaquin County (City of Tracy). EBCE offers renewable power at stable rates, significantly reducing energy-related greenhouse emissions and enabling millions of dollars of reinvestment in local energy programs. EBCE'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 EBCE

General. EBCE was formed in December 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 EBCE 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, EBCE (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 EBCE's billings for electricity to EBCE on a daily basis.

Commencement of Service and Expansion. EBCE began serving customers in communities in Alameda County in 2018, with the exception of the City of Alameda, which has its own municipal utility, and the cities of Newark and Pleasanton, which did not decide to join the initial JPA. In 2019 the Board of Directors adopted a policy enabling EBCE to provide service to new communities, leading to expansion of EBCE's service territory to include the Alameda County communities of Newark and Pleasanton, as well as the City of Tracy in neighboring San Joaquin County. As further described below, EBCE now serves 15 communities.

Service Area

Communities Served by EBCE. EBCE currently serves 15 jurisdictions in Alameda and San Joaquin Counties and the unincorporated areas of Alameda County, as follows:

City of Albany	City of Berkeley	City of Dublin
City of Emeryville	City of Fremont	City of Hayward
City of Livermore	City of Newark	City of Oakland
City of Piedmont	City of Pleasanton	City of San Leandro
City of Tracy	City of Union City	County of Alameda

Service Area Map. The service area of EBCE is shown on the map below, highlighting the three communities added in 2019:

Governance and Management

Board of Directors. EBCE is governed by its Board of Directors. Each community that has elected to join EBCE 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, Administrative, and Procurement Subcommittee, a Marketing, Regulatory, and Legislative

Subcommittee, and Ad Hoc Committees with members appointed by the Board of Directors that review and report to the Board on various matters.

Management.

Nick Chaset, Chief Executive Officer*:* As CEO, Nick is responsible for the vision, strategy, and leadership of EBCE. After being selected to coordinate the efforts to launch EBCE in 2017, Nick has built out the organization with the capable staff and dedicated resources to grow and sustain a sophisticated and innovative public power agency. Nick has more than 15 years of experience developing and deploying clean energy policy and business models. Directly prior to EBCE, Nick was the Chief of Staff to California Public Utilities Commission President Michael Picker. He also previously served as a special advisor to Governor Jerry Brown focused on distributed energy resources. He began his career working in clean energy for Q-Cells, RenewFinancial, the California Public Utilities Commission and KEMA Consulting. Nick holds an MBA from Georgetown University and a BA in international relations from Tufts University. Nick also sits on the Board of the California Community Choice Association.

Howard Chang, Chief Operating Officer & Treasurer. As the Chief Operating Officer, Howard oversees Finance, Power Resources, Administrative Services, and Technology & Analytics functions at EBCE. Howard works closely with the CEO to operationalize and execute on the strategy and vision for EBCE, managing the development and establishment of internal policies and procedures to help take EBCE to the next level of maturity and growth. As Treasurer, Howard is also responsible for managing the financial health of the agency. Prior to EBCE, Howard led Sol Systems' Utility Development and M&A efforts nationally and worked at SunEdison leading the C&I Channel Operations team, serving as Chief of Staff of the North America Region, and in Utility scale project finance. He began his career in Investment Banking at J.P. Morgan and worked in General Electric's Energy Financial Services division and EnerNoc's Utility Solutions team. Howard holds an MBA from the Yale School of Management, a Master of Environmental Management from the Yale School of Forestry & Environmental Studies, and a BA in Economics from Johns Hopkins University.

Melissa Brandt, Deputy General Counsel & Senior Director of Public Policy. Melissa leads EBCE's Public Policy team, overseeing compliance, as well as EBCE's participation in regulatory proceedings at the California Public Utilities Commission (CPUC), California Energy Commission (CEC), California Air Resources Board (CARB), and California Independent System Operator (CAISO) on strategic issues that affect EBCE. She works closely with EBCE's lobbying firm on California legislative matters that impact EBCE. Melissa has ten years of experience in the energy industry. Prior to joining the EBCE team, Melissa led a team of regulatory case managers at PG&E. She previously led greenhouse gas commercial strategy and cap-and-trade procurement efforts and negotiated long-term electric power purchase agreements. She began her career in the federal government as a Presidential Management Fellow at the Bureau of Land Management and the State Department, and as a civil servant at the Office of Management and Budget. Melissa holds a B.A. in Environmental Sciences from U.C. Berkeley, a Juris Doctor from Columbia University, and a Master of Public Administration from Harvard's Kennedy School of Government. She is a member of the State Bar of California.

Jason Bartlett, Finance Manager. As Finance Manager, Jason is responsible for all Finance, Budget, Accounting, Investments and Internal Financial Risk Management functions. Jason joined EBCE early in its operations with the goal of further enhancing the organization's mandate of advancing renewable energy and energy efficiency through reduced financing costs, improving and leveraging EBCE's credit strength, and maximizing returns on capital and investments. Jason brings over 10 years of public utility finance experience having worked with some of California's largest agencies, including the CEC, CPUC, and SFPUC. He has extensive experience managing large budgets and has helped finance over $1 billion of utility infrastructure projects over his career.

Marie Fontenot, Senior Director of Power Resources. Marie sets the procurement strategy for all wholesale power products and leads a team to execute this strategy, ensuring EBCE delivers upon its commitments to the Board of Directors and communities it serves to provide customers with clean, affordable electricity. She also ensures EBCE complies with California's Renewable Portfolio Standard, Resource Adequacy and electric system reliability requirements. Prior to joining EBCE, Marie served as Chief of Staff to PG&E's Executive Vice President and General Counsel; she also led PG&E's Competitive Solicitations team, negotiated long-term energy storage and renewable energy contracts, and stood up PG&E's renewable energy credit (REC) trading program. She began her career in energy at Xcel Energy as a NERC-certified Power Systems Trader responsible for bidding supply and demand into the MISO and SPP energy markets, performing generation control and dispatch, and trading physical electricity. Marie holds a BS in Journalism and an MBA from the University of Colorado.

Customers

General. EBCE provides energy to more than 635,000 residential, commercial, and industrial accounts serving approximately 1,700,000 residents and businesses in its service area. The current mix of EBCE's customer base is approximately 42% residential and 58% commercial/industrial by percentage of load served, and 46% residential and 54% commercial/industrial by percentage of revenue. EBCE's 10 largest customers represent 3% of EBCE's overall load, and no one of them individually represents more than 0.46%.

Customer Energy Choices. EBCE offers different choices of energy service, referred to as Bright Choice, Brilliant 100, and Renewable 100. In 2020, customers receiving Bright Choice service are provided with a minimum of 39% renewable energy, sourced from a mix of wind, geothermal, solar, small hydro and biomass/biowaste. As per EBCE Board policy, Bright Choice service is required to contain at least 5% more RPS-eligible renewable power compared to the current PG&E forecast for the next year, and it will ramp up to 100% greenhouse gas free ("*GHG-free*") by 2030. Customers electing to receive Brilliant 100 service are provided with carbon-free power, 33% renewable energy and the remaining from large hydroelectric power. Brilliant 100 service was closed to new customers in August 2020, with the exception of customers in newly enrolled communities of Newark, Pleasanton, and Tracy in April 2021. All customers will transition off of Brilliant 100 service in January 2022. Customers elected to receive Renewable 100 are provided with 100% renewable energy from wind and solar sources in California.

Customer Enrollment. All customers are automatically enrolled in the default product selected by their local jurisdiction based on customer class and program participation, as shown in the table below. Customers may change their product after enrolling in the default service.

Jurisdiction	Commercial	Residential	CARE/FERA/Med
Albany*	Brilliant 100	Brilliant 100	Brilliant 100
Hayward*	Brilliant 100	Brilliant 100	Bright Choice
Piedmont	Bright Choice	Renewable 100	Brilliant 100
Pleasanton	Brilliant 100	Brilliant 100	Bright Choice
All other Jurisdictions**	Bright Choice	Bright Choice	Bright Choice

**Brilliant 100 product was the default until August 1, 2020, when the default for newly enrolled customers was changed to Bright Choice*
***Berkeley, Dublin, Emeryville, Fremont, Livermore, Newark, Oakland, San Leandro, Tracy, Union City, and County of Alameda*

Currently, approximately 87.3% of EBCE customers receive Bright Choice service, 11.3% receive Brilliant 100 service, and approximately 1.4% receive Renewable 100 service. Due to commercial enrollments, Brilliant 100 and Renewable 100 customers represent a slightly higher percentage in terms of load (15.8%).

New Customers. EBCE has fully subscribed the cities and unincorporated portions of Alameda County, with the exception of the city of Alameda which is already served by a municipal utility. EBCE also serves the city of Tracy in San Joaquin County.

Customer Election to Opt-out of EBCE Service. Customers can opt-out of EBCE service and return to service from their traditional electric service provider, PG&E, either initially upon the transition to EBCE, or at any time after EBCE becomes the energy provider. EBCE has not experienced a single customer opt-out that had significant financial impact to EBCE's revenues.

Cumulative Opt-Out Rate and Customer Retention. Although opt-out rates peaked during initial enrollment into EBCE service in 2018, opt-out rates have stabilized and are now in the range of 3-5% for eligible customers. In general, EBCE expects opt-out rates to be about 5% when EBCE service begins in a new community. Most opt-outs occur during the 120-day transition period to EBCE service.

Service Rates

General. Rates for EBCE energy service are determined by its Board of Directors and are not regulated by the CPUC. In addition to EBCE'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 EBCE charges for Bright Choice, Brilliant 100, and Renewable 100 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. Bright Choice service is priced a 1% below the cost of PG&E, Brilliant 100 is priced at parity, and Renewable 100 is an additional penny per kilowatt-hour compared to the PG&E generation rate.

Current and Historical Rate Information. An EBCE customer's total cost of electric service is determined by EBCE's charges for energy and include PG&E charges for transmission, distribution, and other non-by-passable charges. Additionally, EBCE'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 EBCE, and other considerations. These charges including the PCIA establish the all-in cost of service to EBCE's customers.

The primary alternative to EBCE service is to opt-out of EBCE service and return to PG&E service where the customer would not pay the PCIA. EBCE's bundled rates for Bright Choice service, the default for most customers, including the PCIA have been below PG&E rates since initial enrollment of customers. Even when the cost of EBCE service to customers has been at or higher than PG&E's, such as in those communities that have selected Brilliant 100 or Renewable 100 as the default service, EBCE has not experienced a material number of opt-outs and has consistently maintained customers counts in those jurisdictions. There are no assurances that this customer behavior will continue during times if and when EBCE's bundled costs are higher than PG&E's or if a new community chooses a premium product for the default service or that EBCE 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 EBCE 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. EBCE has adopted a policy to achieve 100% of retail sales from zero-carbon resources by 2030, fifteen years before the state mandate. EBCE's 2020 retail sales contained 39.6% RPS-eligible resources for Bright Choice service. To date EBCE has executed 6 RPS contracts of ten years or more in duration and will continue to solicit and execute additional contracts to meet EBCE's RPS long-term contracting requirements.

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. EBCE's long-term load forecast is a [10]-year projection of the energy (reflected in MWh) that its customers will annually consume. EBCE's long-term load forecast is driven primarily by the number and types of customers that EBCE expects to serve, in conjunction with weather projections. EBCE'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.

[Long-term Load Forecast graph to be inserted]

Sources of Energy

General. EBCE 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. EBCE currently has over 100 renewable, hydro, system energy, hedge and Resource Adequacy contracts in place from diversified sources and counterparties, totaling over $1.5 billion in notional amount of energy contracts to provide energy to its customers over the next 20-25 years.

Energy Purchases. In 2020, EBCE procured approximately 3.7 million MWh of electricity for its customers. EBCE anticipates that roughly 68% of its total 2021 retail sales will be sourced from renewables, large hydroelectric and Asset Controlling Supplier ("*ACS*") energy (primarily large hydroelectric energy from the Pacific Northwest, but also relatively small amounts of nuclear energy and unspecified system energy). EBCE's procurement strategy through 2030 includes regularly procuring new California renewables by 2030, via contracts with terms of 10 years or more. These renewables contracts will be in addition to the 57 million MWh of annual generation from 550 MW of new California renewables that EBCE has already procured. The strategy also

includes investments in wholesale storage capacity and stand-alone storage, as further described below.

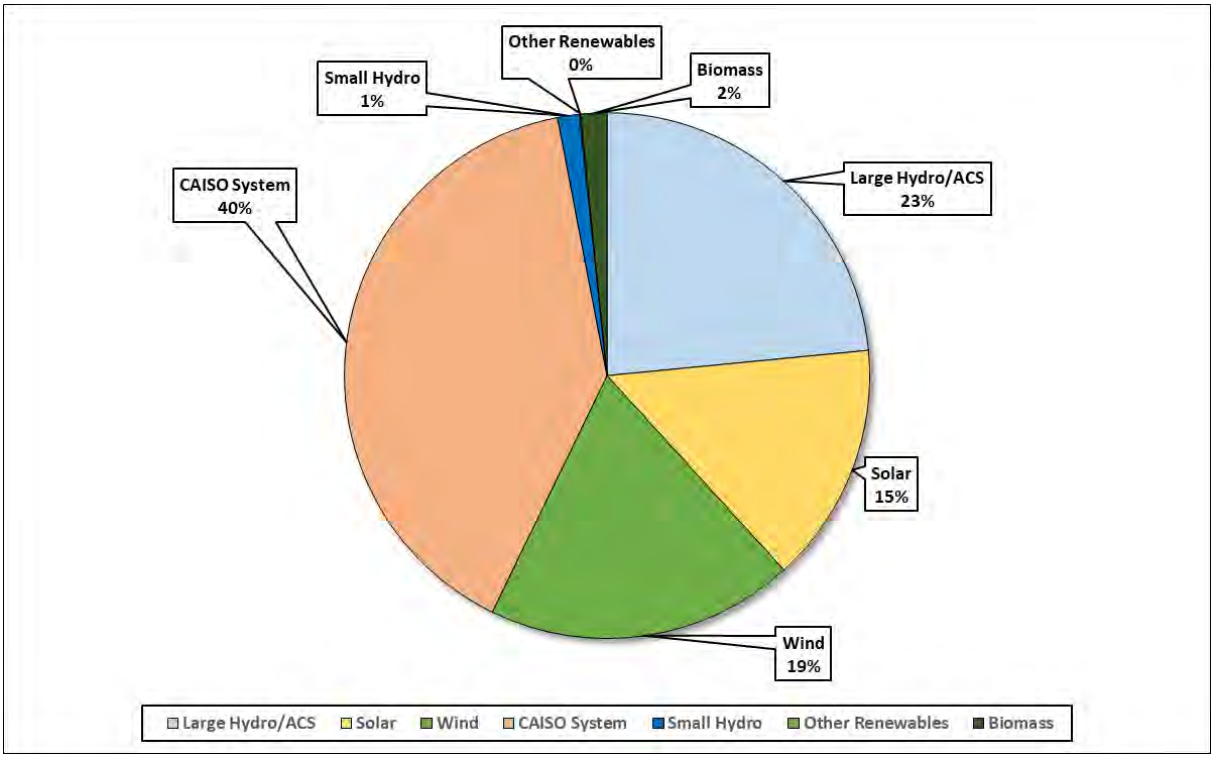
Energy Load and Supply Risk Management. EBCE continually manages its forward load obligations and supply commitments with the objective of balancing cost stability and cost minimization, while leaving some flexibility to take advantage of market opportunities or technological improvements that may arise. EBCE closely monitors its open positions for Portfolio Content Category 1 ("*PCC 1*") and Portfolio Content Category 2 ("*PCC 2*") renewable energy, both of which are based on calendar-year targets. EBCE maintains its renewable 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.

EBCE monitors its positions on a regular basis with its Scheduling Coordinator who produces a weekly report of positions and pricing. EBCE 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 EBCE does not have supply contracts that yield CAISO day-ahead revenue, EBCE uses fixed-price energy contracts where EBCE pays a fixed price per MWh in order to receive a floating price that clears for each hour. This helps hedge EBCE's CAISO day-ahead market price exposure. As EBCE procures increasing portions of fixed-price renewables with storage and fixed-price large hydroelectric and ACS energy, EBCE expects to reduce its use of fixed-price energy contracts.

Procurement. EBCE procures energy and Resource Adequacy consistent with its Board-approved Energy Risk Management Policy. In order to effectively plan and manage its portfolio, EBCE differentiates contracts by their term length: short-term and long-term (longer than ten years). Based upon the expected contract tenor, EBCE may use a variety of methods, including competitive solicitations, standard contract offerings, and bilaterally negotiated agreements. With regard to short-term power purchases, EBCE 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, EBCE may negotiate short-term transactions via its scheduling coordinator or independent energy brokers or marketers.

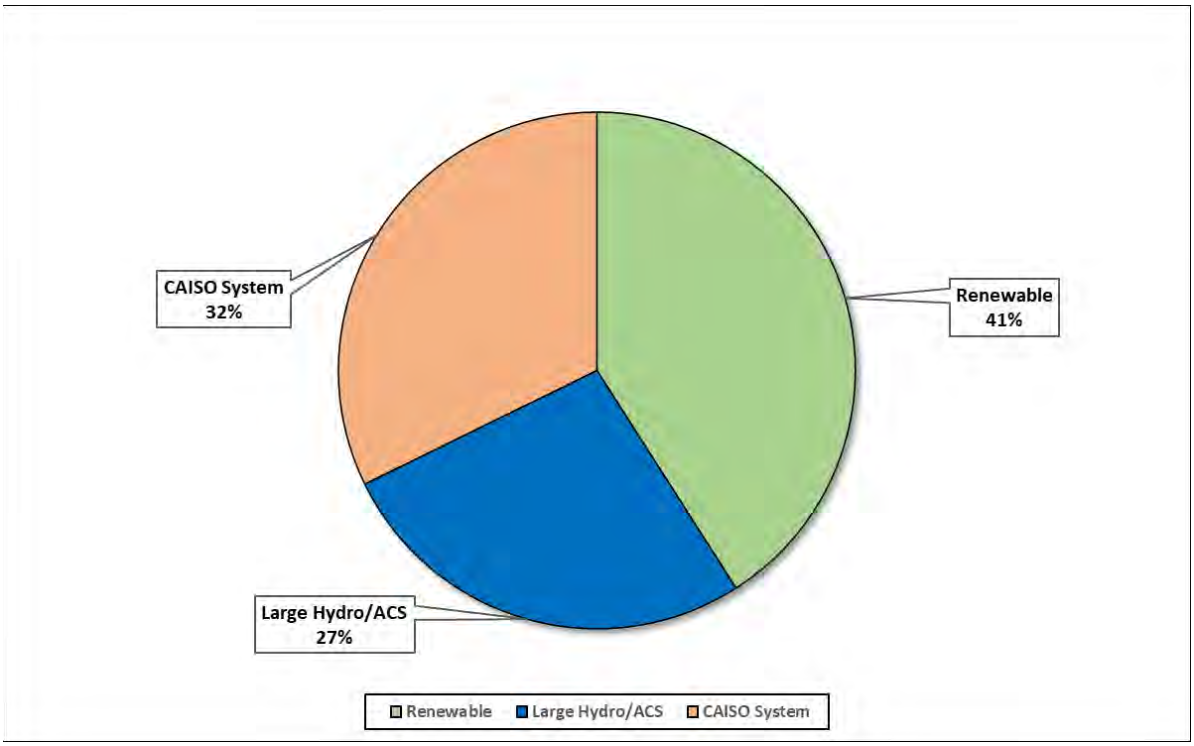
Bright Choice Procurement Targets. Reducing GHG emissions is at the heart of EBCE's mission. Bright Choice is currently the service offering for 87.3% of EBCE customers and EBCE structures the Bright Choice portfolio to deliver a higher renewable content and a competitive cost in comparison to PG&E. Specifically, Bright Choice service is required by EBCE Board policy to contain at least 5% more RPS-eligible renewable power compared to the current PG&E forecast for the next year, and it will ramp up to 100% GHG-free by 2030. To deliver the GHG-free power for Bright Choice, EBCE procures three products: (1) RPS-eligible renewable energy; (2) large hydroelectric energy; and (3) ACS energy, the vast majority of which is large hydroelectric.

EBCE 2020 Resource Mix*



*The chart directly above is the energy supply that EBCE used to serve its 2020 retail sales for the Bright Choice, Brilliant 100, and Renewable 100 product offerings

EBCE 2021 Estimate Resource Mix*



*The chart directly above is an estimate of the energy supply that EBCE will use to serve its 2021 retail sales for the Bright Choice, Brilliant 100, and Renewable 100 product offerings.

Further descriptions of EBCE's policies and procedures addressing energy procurement and risk management can be found on the EBCE website at www.ebce.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.

Energy Storage

EBCE currently has 110 MW of wholesale (*i.e.*, in front of the meter) storage capacity contracted over the course of the next twenty years. The 110 MW of already contracted storage capacity will be paired with renewables, and EBCE is in the process of preparing and executing additional contracts including for stand-alone storage.

In 2020, EBCE launched its Resilient Home 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.

Financial Information

Revenues from Energy Sales and Operating Expenses. EBCE derives its operating revenues primarily from energy sales to its customers. [Increases in operating revenues in the past fiscal year has been driven primarily by the inclusion of new communities beginning in April 2021. This expansion covered the cities of Newark, Pleasanton, and Tracy. Operating expenses, which are comprised primarily of energy procurement costs, also increased due primarily to such expansion.]

Other Sources of Revenue. EBCE 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 EBCE's results of operations for fiscal years ending June 30:

	FY 2020/21*	FY 2019/20	FY 2018/19
OPERATING REVENUES			
Electricity sales, net	$ [_]	$ [_]	$ [_]
Revenue transferred to Operating Reserve Fund	$ [_]	$ [_]	$ [_]

* Unaudited

	FY 2020/21*	FY 2019/20	FY 2018/19
Grant revenue	[_]	[_]	[_]
Wholesale resource sales	[_]	[_]	[_]
Liquidated damages	[_]	[_]	[_]
Other revenue	[_]	[_]	[_]
Total operating revenues	[_]	[_]	[_]
Operating Expenses			
Cost of electricity	[_]	[_]	[_]
Contract services	[_]	[_]	[_]
Staff compensation	[_]	[_]	[_]
General and administration	[_]	[_]	[_]
Depreciation	[_]	[_]	[_]
Total operating expenses	[_]	[_]	[_]
Operating income	[_]	[_]	[_]
NONOPERATING REVENUE (EXPENSES)			
Interest income	[_]	[_]	[_]
Loan fee expense	[_]	[_]	[_]
Total nonoperating revenues (expenses), net	[_]	[_]	[_]
CHANGE IN NET POSITION	[_]	[_]	[_]
Net position at beginning of year	[_]	[_]	[_]
Net position at end of year	[_]	[_]	[_]

*Unaudited

Assets, Liabilities, Deferred Inflows or Resources and Net Position. The following table is a summary of EBCE's assets, liabilities, deferred inflows or resources and net position for the years ending June 30:

	FY 2020/21*	FY 2019/20	FY 2018/19
ASSETS			
Current assets			
Cash and cash equivalents	$ [_]	$ [_]	$ [_]
Accounts receivable, net of allowance	[_]	[_]	[_]
Accrued revenue	[_]	[_]	[_]
Market settlements receivable	[_]	[_]	[_]
Other receivables	[_]	[_]	[_]
Prepaid expenses	[_]	[_]	[_]
Investments	[_]	[_]	[_]

* Unaudited

	FY 2020/21*	FY 2019/20	FY 2018/19
Deposits	[_]	[_]	[_]
Restricted cash	[_]	[_]	[_]
Total current assets	[_]	[_]	[_]
Noncurrent assets			
Unrestricted cash in Operating Reserve Fund	[_]	[_]	[_]
Restricted cash	[_]	[_]	[_]
Capital assets, net of depreciation	[_]	[_]	[_]
Deposits	[_]	[_]	[_]
Total noncurrent assets	[_]	[_]	[_]
Total Assets	[_]	[_]	[_]
LIABILITIES			
Current liabilities			
Accounts payable	[_]	[_]	[_]
Accrued cost of electricity	[_]	[_]	[_]
Other accrued liabilities	[_]	[_]	[_]
User taxes and energy surcharges due to governments	[_]	[_]	[_]
Security deposits from energy suppliers	[_]	[_]	[_]
Advances from grantors	[_]	[_]	[_]
Total current liabilities	[_]	[_]	[_]
Noncurrent liabilities			
Contract retention	[_]	[_]	[_]
Total liabilities	[_]	[_]	[_]
DEFERRED INFLOWS OF RESOURCES			
Operating Reserve Fund	[_]	[_]	[_]
NET POSITION			
Net position			
Investment in capital assets	[_]	[_]	[_]
Restricted for line of credit collateral	[_]	[_]	[_]
Unrestricted	[_]	[_]	[_]
Total net position	[_]	[_]	[_]

*Unaudited

Deposit Accounts. [_].

Other Liquidity Sources. [_].

APPENDIX F

BOOK-ENTRY SYSTEM

The Depository Trust Company (*"DTC"*), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity of the Bonds exceeds $500 million, one certificate will be issued with respect to each $500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such maturity.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants (*"Direct Participants"*) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (*"DTCC"*). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (*"Indirect Participants"*). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (*"Beneficial Owner"*) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership.

DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to CCCFA of securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts such Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and payments of principal and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from CCCFA or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, CCCFA or the Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of CCCFA or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to CCCFA or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

CCCFA may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates are required to be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that CCCFA believes to be reliable, but CCCFA takes no responsibility for the accuracy thereof.

APPENDIX G

REDEMPTION PRICE OF THE BONDS

The following table sets forth the Redemption Price of the Bonds (but excluding accrued interest which is payable from the amounts required to be on deposit in the Debt Service Account) upon an extraordinary mandatory redemption following an Early Termination Payment Date under the Prepaid Energy Sales Agreement, as of the redemption dates shown below during the Initial Interest Rate Period.

REDEMPTION DATE	REDEMPTION PRICE[1]

1 Amortized Value of the Bonds as of each Redemption Date.

APPENDIX H

SCHEDULE OF TERMINATION PAYMENTS

The following table sets forth the Schedule of Termination Payments under the Prepaid Energy Sales Agreement as of the specified Early Termination Payment Dates during the Initial Interest Rate Period. The Early Termination Payment Date is the Business Day preceding the date listed below.

MONTH OF EARLY TERMINATION DATE	EARLY TERMINATION PAYMENT DATE[5]	TERMINATION PAYMENT

[5] If any Early Termination Payment Date is not a Business Day, the Early Termination Payment is due on the preceding Business Day.