**Staff Report Item 15**

**TO:** East Bay Community Energy Board of Directors

**FROM:** Howard Chang, Chief Operating Officer

**SUBJECT:** **Energy Prepay Transaction #2 Request for Approval (Action Item)**

**DATE:** May 18, 2022

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## Recommendation

Adopt a Resolution authorizing the execution of a Power Supply Contract and certain other documents to enable EBCE to enter into its second energy prepayment transaction.

## Background and Discussion

In 2021, EBCE successfully executed its first 30-year energy prepay transaction for renewable and carbon free energy with an associated bond transaction issued through the California Community Choice Finance Authority (CCCFA). This was the first energy prepay transaction by a CCA. Beginning on January 1, 2022 energy began to flow through that transaction, with EBCE realizing over $2MM in annual savings as a result. These savings allow for EBCE to utilize its tax-exempt status to lower our overall procurement costs. EBCE is preparing to execute a second prepay transaction, largely replicating the first transaction. One distinct change in this second transaction is that EBCE will be executing this as an individual CCA, whereas the initial transaction was done jointly with SVCE.

With these energy prepay transactions EBCE will assign in existing and/or forthcoming Power Purchase Agreements (PPAs). Based on the number of eligible source specified PPAs that EBCE will seek to continue to execute on additional prepay transactions in the coming years to maximize the available savings. This second transaction is expected to be a 30-year transaction. Following EBCE board approval, we will seek CCCFA approval. We anticipate being fully enabled with documents prepared so that we are able to go out to market in the June timeframe. The actual issuance of bonds and closing of the transaction will be dependent on market conditions and the necessary interest rate spreads.

*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

- Role: Provide energy contracts to flow through prepay and receive discount

**Prepay Supplier and Bond Underwriter**: Morgan Stanley
- Role: Structure transaction and pay contract price to PPA provider
- Selection Process: via solicitation issued by EBCE 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 in September 2020

**Bond Counsel**: Orrick, Herrington & Sutcliffe
- Role: Represent bondholders
- Selection Process: via solicitation issued by EBCE in June 2020

**Tax Counsel**: Orrick, Herrington & Sutcliffe
- Role: Provide tax opinion on transaction
- Selection Process: via solicitation issued by EBCE 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 in June 2020

**Disclosure Counsel**: Chapman and Cutler LLP
- Role: Prepare Official Statement
- Selection Process: via solicitation issued by EBCE 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**: Bank of New York
- Role: Manage the various Payment Accounts
- Selection Process: via solicitation issued in July 2021

**Commodity Swap Counterparty**: Natixis
- Role: Provide commodity swap for any periods with floating/indexed power prices
- Selection Process: via solicitation issued by Morgan Stanley in April 2022. The swap counterparty is the one role that is being transitioned to a new party due to pricing improvements and to diversify the number of counterparties providing this service.

**Credit Rating Agency**: Moody's
- Role: Rate the bonds
- Selection Process: based on an evaluation of the limited providers in the market and chosen due to accepted market standards

*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
- Signed by: **EBCE** 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 (BONY)

**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 CCA operational history), transaction size and key terms; used to market the bonds
- Signed by: *Not a signed document*

**Cost Share Memorandum of Understanding (MOU)**

- Function: Details the cost share arrangement with MS to cover rating agency and green bond designation fees and EBCE responsibility to cover costs in place of CCCFA

*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 CCCFA (Issuer)
- PPA Payments Custodial Agreement with Morgan Stanley and BONY

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 $1,000,000,000
(c) the annual energy savings to EBCE under the Power Supply Contract shall be at least $4.50 per MWh

*Previous Background Information:*

An energy prepayment 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. To date, EBCE, Silicon Valley Clean Energy (SVCE), and MCE have executed prepay transactions and currently 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%. The typical bond tenors are in the 7-10 year range, so there will be a reissuance and reset of the discount several times throughout the life of the 30-year prepay. There is a negotiated minimum discount over the life of the transaction 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 likely be no greater than $1.25bn; these contracts can be long-term renewables PPAs or other source specified commodity supply contracts, such as large hydro. The contracts are a limited assignment to the Prepay Supplier and 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.

## Financial Impact

The purpose of pursuing the prepay transaction is to achieve meaningful energy procurement cost savings. This transaction is targeting a 10% discount at the outset, which translates to $2-3MM of annual savings.

The majority of fees paid to various parties involved in the prepay will be payable from the proceeds of the prepay bonds. That is to say, there is limited out-of-pocket cost to EBCE; the cost will be paid out of the savings realized from the prepay transaction. With that said there are a portion of fees, such as certain counsel fees, rating agency fees, and green bond designation fees that are not contingent. We have negotiated to have MS split these costs with EBCE if the deal does not close. Additionally, we will only move forward in authorizing these fees when necessary.

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
L. Cost Share MOU

**RESOLUTION 2022-[__]**

**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 2022 EBCE; 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 Joint Powers Agreement (as defined below) 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 has 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 2022 EBCE (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 between EBCE and the Issuer; and

6. Cost Share Memorandum of Understanding (MOU), by and between EBCE, MS, and CCCFA; 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, BE IT RESOLVED** by the EBCE Board of Directors, 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 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 $1,000,000,000; and

(c) the annual energy savings to EBCE under the Power Supply Contract shall be at least $4.50 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 [____] day of [_____], 2022

_____
Dianne Martinez, Chair

**Attest:**

_____
Adrian Bankhead, Clerk of the Board

MAY 18, 2022

# Energy Prepay Transaction #2 Request for Approval

EAST BAY COMMUNITY ENERGY

# Proposed Follow-on Prepay Transaction



- Standalone EBCE Prepay transaction issuing through CA Community Choice Financing Authority (CCCFA), the JPA in which EBCE is a member
- Largely replicating the initial transaction to get to market efficiently. Utilizing the prior RFPs issued/awarded in 2020 and 2021 to renew various counsel and advisory roles.
- Prior transactions required >1.5yrs to complete and targeting 3 to 6 months for the second transaction
- Anticipate $500M to $1bn total size in principal

Next Steps:

- May: Seek EBCE board and CCCFA board approval to transact
- June onwards: Go out to market and determine optimal timing to price
- Taxable vs. tax-exempt spreads have been very volatile with uncertainty as to when conditions will be suitable. With this volatility it is difficult to predict the exact timing for execution of this transaction but may take 3 to 6 months.

# 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
  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.

# Prepay Sizing and Discount



- The total bond proceeds may be as high as $1.25bn 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 transaction will translate to an estimated $2-3MM of annual savings for EBCE for the initial bond term.
  - The transaction assumes an increase in the cashflows running through the prepay over the 30-year life.
  - 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 based on bond tenors 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.
- The initial power flows for the transaction are anticipated to begin in April 2023

# EBCE Prepay Parties



**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 (POS, 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**: BONY
- PFM issued solicitation early July 2021; final selection in process

**Commodity Swap Counterparty**: Natixis
- This is one of the few counterparties that is new to this transaction after going back out to market in April 2022. A new counterparty was selected due to improved pricing and an interest in diversification

**Credit Rating Agency**: Moody's
- Discussions in process

# Documents Overview: EBCE Signs

Attachment Consent Item 15B

1. Power Supply Contract
   - Sets forth terms for which CCA receives energy for 30-year term
   - Signed by EBCE and CCCFA
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
   - Signed by EBCE and CCCFA
5. PPA Payments Custodial Agreement
   - Details cash flows between PPA Buyer (CCA), Prepay Supplier, and Custodian
   - Signed by EBCE, Morgan Stanley, and BONY
6. Cost Share Memorandum of Understanding (MOU)
   - Details the cost share arrangement with MS to cover rating agency and green bond designation fees and EBCE responsibility to cover costs in place of CCCFA

# Documents Overview: CCCFA Signs

Attachment Consent Item 15B

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)
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



1. Preliminary Offering Statement (POS)
   - Official offering document used to market the bonds
   - Details parties (including appendix of info on EBCEs operational history), transaction size and key terms
   - Not a signed document

# 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 CCCFA (Issuer)
  - Sign **PPA Payments Custodial Agreement** with Morgan Stanley and BONY
- 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 $1,000,000,000; and

c) the annual energy savings to EBCE under the Power Supply Contract shall be at least $4.50 per MWh.

# Appendix

EAST BAY COMMUNITY ENERGY

# Existing Prepay Overview



**Recap:**

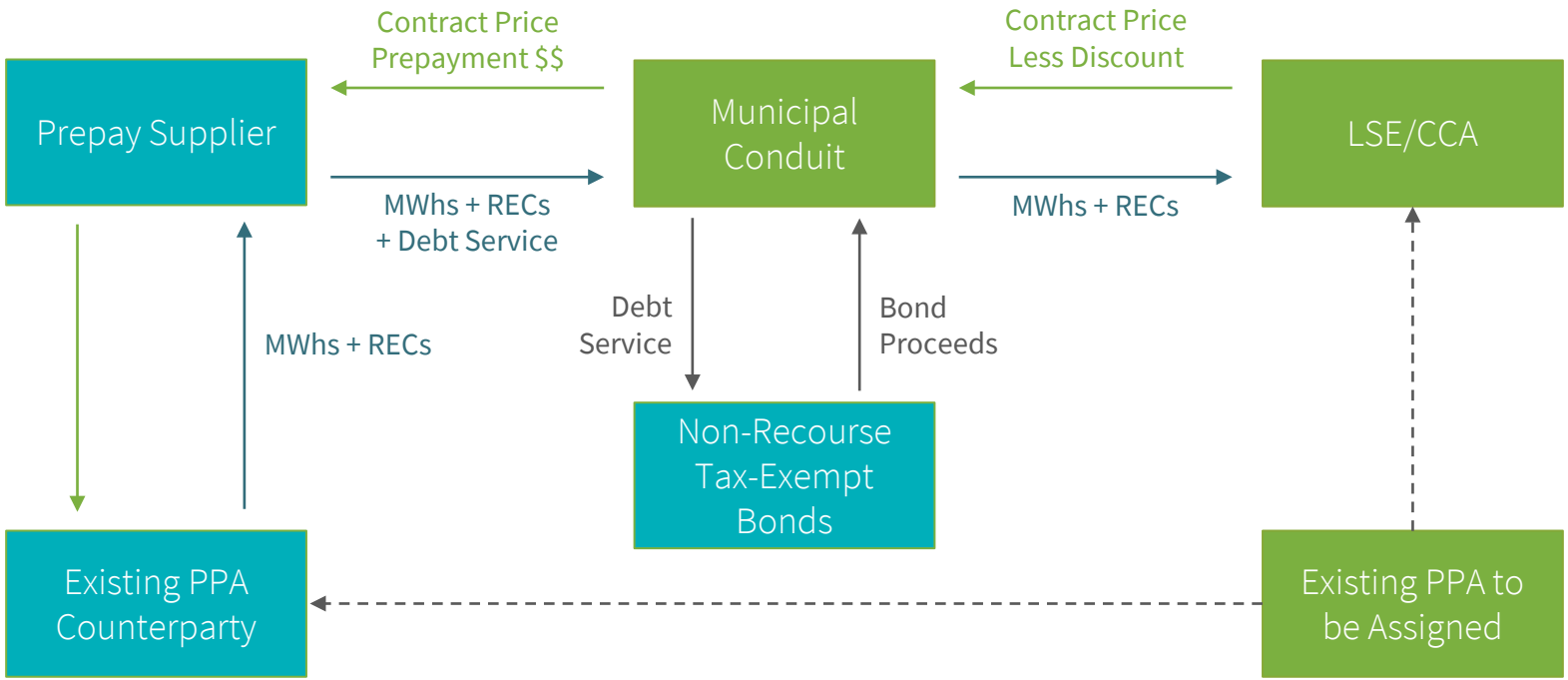
- Closed: Sept. 23, 2021
- Total Bond Proceeds: $1.48 Billion
- Rating: A1, “Green Bond” Certified
- Volume to EBCE: 59 MW Around-the-Clock Carbon-Free Energy
- Power Supply Start: January 1, 2022
- Savings, Years 1-10: $2 Million / year

**In progress / Ongoing:**

- Settlements and invoicing were initiated on January 1, 2022
- Assessing future PPAs to be put through prepay structure

# 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.

# 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.
  - Typically 30-year term, LSE committing ~$350MM-$850MM of energy supply contracts (combined contract notional values)
  - LSE utilizes in order to lower customer energy costs
- Prepay Supplier is assigned an existing energy supply contract, pays the contract price to PPA Seller and immediately transfers all electricity and attributes to LSE. LSE pays the Prepay Supplier.
- 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 1990’s, the IRS issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327)

# 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.
- All other terms of the PPA are unchanged
- If the prepay program terminates early, prepaid 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
- Active Suppliers: Goldman Sachs, Morgan Stanley, Royal Bank of Canada, Citi, Bank of America are all investment grade rated financial institutions

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 (i.e. the bank receiving the prepayment). 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 and arranged by the Prepay Supplier

# Key Risks



- If this transaction does not materialize: Loss of out-of-pocket costs and staff time
  - Consultants are primarily contingent on successful deal, with the exception of certain counsel fees, rating agency, and green bond designation fees
  - 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

# POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

EAST BAY COMMUNITY ENERGY AUTHORITY

Dated as of [____], 2022

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**Exhibits**

# POWER SUPPLY CONTRACT

This Power Supply Contract (hereinafter "Agreement") is made and entered into as of [____], 2022 (the "Execution Date"), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("Issuer") and East Bay Community Energy Authority, a joint powers authority and a community choice aggregator organized under the Laws of the State of California ("Purchaser").

W I T N E S S E T H:

WHEREAS, Issuer has planned and developed a project to acquire long-term Energy supplies from Morgan Stanley Energy Structuring, L.L.C. ("MSES") pursuant to a Prepaid Energy Sales Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Prepaid Agreement") to meet a portion of the Energy supply requirements of Purchaser through an energy prepayment project (the "Energy Project"); and

WHEREAS, Issuer will finance the prepayment under the Prepaid Agreement, and the other costs of, the Energy Project by issuing the Bonds; and

WHEREAS, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code with authority to sell electricity to retail electric consumers within its service area; and

WHEREAS, Purchaser is agreeable to purchasing a portion of its Energy requirements from Issuer under the terms and conditions set forth in this Agreement and Issuer is agreeable to selling to Purchaser such supplies of Energy under the terms and conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser has assigned to MSES certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be delivered to Issuer under the Prepaid Agreement and then resold by Issuer hereunder; and

WHEREAS, as a condition precedent to the effectiveness of the Parties' obligations under this Agreement, Issuer shall have entered into the Prepaid Agreement and shall have issued the Bonds.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency

of which are hereby acknowledged, Issuer and Purchaser (the "Parties" hereto; each is a "Party") agree as follows:

## ARTICLE I
## DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

"Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

"Annual Refund" means the annual refund, if any, provided to Purchaser and calculated pursuant to the procedures specified in Section 3.2(c).

"Applicable Rating Agencies" means, at any given time, each Rating Agency then rating the Bonds.

"Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.

"Assigned Energy" has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

"Assigned 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, (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh. As used in this definition, "Pricing Interval" means the unit of time for which CAISO establishes a separate price.

"Day-Ahead Market Price" means The Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; 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 commencing at 00:00 (PPT) on the first day of the Delivery Period, and each Hour thereafter during the Delivery Period.

"Delivery Period" means the period beginning on [____], 2022 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 00:00 PPT during the Delivery Period. The term "Hourly" shall be construed accordingly.

"Hourly Quantity" means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

"Initial Assigned PPA" means that certain Master Power Purchase and Sale Agreement dated February 12, 2018 and the Confirmation thereunder dated as of the date hereof between the Initial PPA Supplier and Purchaser.

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

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

"Initial PPA Supplier" means MSCG.

"Initial Reset Period" means the period beginning on [____], 2022 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 $[____] per MWh for the Initial Rate Period and thereafter no less than $[____] per MWh. Both amounts are inclusive of any projected Annual Refund.

"Month" means, during the Delivery Period, a calendar month. The term "Monthly" shall be construed accordingly.

"Monthly Discount" means (i) for the Initial Reset Period, an amount (when taken together with any Annual Refund) that is not less than the Minimum Discount and is specified in Exhibit F, which Exhibit F shall be provided by Issuer to Purchaser on the Bond Closing Date, and (ii) for each subsequent Reset Period, a portion of the Available Discount for such Reset Period determined by the Calculation Agent pursuant to the Re-Pricing Agreement and set forth in an updated Exhibit F provided by Issuer after such determination.

"Monthly Quantity" means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

"MSCG" means Morgan Stanley Capital Group Inc., a Delaware corporation.

"MSES" has the meaning specified in the recitals.

"Municipal Utility" means any Person that (a)(i) is a "governmental person" as defined in the implementing regulations under Section 141 of the Code and any successor provision and owns a natural gas or electric distribution utility (or provides Energy at wholesale

to, or that is sold to entities that provide natural gas or Energy at wholesale to, governmental Persons that own such utilities) or (ii) is a community choice aggregator organized under the Laws of the State of California, and (b) agrees in writing to use the Energy purchased by it (or cause such as to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

"MWh" means megawatt-hour.

"Non-Priority Energy" means Energy that is not Priority Energy.

"Party" has the meaning specified in the recitals.

"PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, MSES or any successors thereto pursuant to any Assigned Rights and Obligations.

"Person" means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

"Portfolio Content Category 1" means any Renewable Energy Credit associated with the generation of electricity from an "Eligible Renewable Energy Resource" consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Potential Remarketing Event" has the meaning specified in Section 3.4(b).

"PPA Supplier" means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the terms of the Assignment Letter Agreement.

"PPT" means Pacific Prevailing Time.

"Prepaid Agreement" has the meaning specified in the recitals.

"Priority Energy" means the Contract Quantity to be purchased by Purchaser under this Agreement, together with Energy that Purchaser is obligated to take under a long-term agreement, which Energy either (i) has been purchased by Purchaser or a joint action agency in a prepayment transaction using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes, or (ii) is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes (provided that, with respect to clause (ii), Priority Energy shall not include Energy that is generated using capacity that was wholly or partially financed through the monetization of renewable tax credits, whether such monetization is accomplished through a tax equity investment or otherwise, or that is generated from federally owned and operated hydroelectric facilities, including through the United States Army Corps of Engineers and the United States Bureau of Reclamation, and marketed by the Bonneville Power Administration or the Western Area Power Administration).

"Project Administration Fee" means the annual fee payable by Purchaser as described in Section 3.2(b).

"Project Participant" has the meaning specified in the Bond Indenture.

"Purchaser" has the meaning specified in the preamble.

"Purchaser Default" has the meaning specified in Section 17.2.

"Purchaser's Statement" has the meaning specified in Section 14.1(a).

"Qualifying Use Requirements" means, with respect to any Energy delivered under this Agreement, such Energy is used (i) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

"Rating Agency" has the meaning specified in the Bond Indenture.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Issuer and MSES.

"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 The Bank of New York Mellon Trust Company, N.A., and its successors as Trustee under the Bond Indenture.

"Voided Remarketing Election Notice" has the meaning specified in Section 3.4(b).

"WREGIS" means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to "Articles," "Sections," "Schedules" and "Exhibits" shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

## ARTICLE II
## EXECUTION DATE AND DELIVERY PERIOD; NATURE OF ENERGY PROJECT

Section 2.1 Execution Date; Delivery Period. Unless this Agreement is terminated pursuant to Article XVII, delivery of Energy under this Agreement shall commence and continue for the Delivery Period.

Section 2.2 Termination Due to Failure to Issue Bonds or Provide Minimum Discount. Each Party shall have a right to terminate this Agreement with the effect that this Agreement shall be of no further force or effect and the Parties shall have no rights or obligations hereunder if (a) the Bonds are not issued on or before [____], 2022, or (b) Issuer notifies Purchaser that the expected Available Discount for the Initial Reset Period is less than the Minimum Discount.

Section 2.3 Nature of Energy Project. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Energy to Purchaser under this Agreement exclusively through its purchase of long-term supplies of Energy from MSES pursuant to the Energy Project and that Issuer is financing its purchase of such long-term supplies through the issuance of the Bonds. As provided in Section 3.2(a) below, Purchaser shall pay a fixed price for Energy during the Initial EPS Energy Period and thereafter shall pay a floating price, less the Monthly Discount in each case.

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 Day-Ahead Market Price minus (B) the Monthly Discount; and

(ii) for Assigned Energy after the Initial EPS Energy Period, (A) the Day-Ahead Average Price for the Month in which Energy is delivered, minus (B) the Monthly Discount. The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

(b) Issuer shall bill and Purchaser shall pay in January of each year during the Delivery Period a "Project Administration Fee" equal to the result of (x) $[75,000.00] minus the balance of the Administrative Fee Fund (as defined in the Bond Indenture) as of January 1 of such year, multiplied by (y) 0.54.

(c) During the term of this Agreement, promptly following completion of the annual audit of Issuer's financial statements at the end of each fiscal year (currently the twelve-month period ending December 31), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Energy Project for that fiscal year. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to the Project Participant in the amount available after making allowances for any necessary and appropriate reserves and contingencies (including but not limited to amounts deemed reasonably necessary by Issuer to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds. As of the Execution Date, the projected Annual Refund for the Initial Rate Period is $[____] per MWh.

Section 3.3 No Obligation to Take Base Energy. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base

Energy hereunder, and Issuer shall cause MSES to remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement.

Section 3.4 Reset Period Remarketing.

(a) Reset Period Notice. For each Reset Period, Issuer shall provide to Purchaser, at least ten (10) days prior to the Remarketing Election Deadline, formal written notice setting forth (i) the duration of such Reset Period, (ii) the Estimated Available Discount (as defined in the Re-Pricing Agreement) for such Reset Period, and (iii) the applicable Remarketing Election Deadline (a "Reset Period Notice"). Issuer may thereafter update such notice at any time prior to the Remarketing Election Deadline and may extend the Remarketing Election Deadline in its sole discretion in any such update.

(b) Remarketing Election. If the Reset Period Notice (or any update thereto) indicates that the Available Discount in such notice is not at least equal to the Minimum Discount for that Reset Period, then: (i) a "Potential Remarketing Event" shall be deemed to exist, and (ii) Purchaser may, not later than the Remarketing Election Deadline, issue a written notice in the form attached hereto as Exhibit C (a "Remarketing Election Notice") to Issuer, MSES and the Trustee electing for all of Purchaser's Energy that would otherwise be delivered hereunder to be remarketed during the applicable Reset Period; *provided*, however, if the actual Available Discount, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount, then Issuer may, in its sole discretion, elect by written notice to Purchaser to treat such Remarketing Election Notice as void (a "Voided Remarketing Election Notice"). For the avoidance of doubt, in the event that Purchaser issues a Remarketing Election Notice (other than a Voided Remarketing Notice), any rights and obligations assigned to MSCG under the Initial Assigned PPA or a subsequent Assignment Agreement including, without limitation, the right to receive Assigned Energy, shall revert to Purchaser as of the end of the Initial Reset Period or the then-current Reset Period, as applicable.

(c) Final Determination of Available Discount. The Parties acknowledge and agree that the final Available Discount for any Reset Period following the Initial Reset Period will be determined on the applicable Re-Pricing Date (as defined in the Re-Pricing Agreement), and that such Available Discount may differ from the estimate or estimates of such Available Discount provided to Purchaser prior to the applicable Remarketing Election Deadline. Accordingly, the Parties agree that:

(i) the Available Discount for any Reset Period will not be less than the Minimum Discount applicable to such Reset Period, unless Issuer has provided notice of a Potential Remarketing Event to Purchaser in accordance with Section 3.4(b); and

(ii) if Purchaser receives notice of a Potential Remarketing Event and has not provided a Remarketing Election Notice prior to the applicable Remarketing Election Deadline, Purchaser shall be deemed to have elected to continue to purchase and receive its Contract Quantity at a Contract Price that reflects the Monthly Discount portion of the Available Discount as finally determined on the applicable Re-Pricing Date, plus Purchaser's right to its share of Annual Refunds, if any, and all delivery and purchase

obligations under this Agreement shall continue in full force and effect for the applicable Reset Period.

(d) Resumption of Deliveries. Notwithstanding the issuance of any Remarketing Election Notice for a Reset Period, Purchaser will (i) remain obligated to purchase the Contract Quantities hereunder for each subsequent Reset Period, unless Purchaser issues a new valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any such Reset Period in accordance with Section 3.4(b) and (ii) not make any new commitment to purchase Priority Energy during such Reset Period to the extent any such commitment could reasonably be expected to cause, during any portion of the Delivery Period after such Reset Period, Purchaser's aggregate obligations to purchase Priority Energy (including its obligation to purchase Priority Energy hereunder) to exceed Purchaser's expected aggregate requirements for Energy that will be used (A) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (B) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code.

(e) Reduction of Contract Quantity. The Parties recognize and agree that the Contract Quantity may be reduced in a Reset Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Issuer and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) Issuer will notify Purchaser, (B) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (C) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

## ARTICLE IV
## FAILURE TO DELIVER OR TAKE ENERGY

Notwithstanding anything herein to the contrary, neither Purchaser nor Issuer shall have any liability or other obligation to one another for any failure to Schedule, take, or deliver Assigned Product.

## ARTICLE V
## TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

Section 5.2 Scheduling. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Agreement.

Section 5.3 Title and Risk of Loss. Title to the Energy delivered under this Agreement and risk of loss shall pass from Seller to Buyer at the Assigned Delivery Point. The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.

Section 5.4 PCC1 Product and Long-Term PCC1 Product. To the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]**. As used above, "Seller" means "Issuer", Buyer means "Purchaser", and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, Non-modifiable. D.11-01-025]**. As used above, "Seller" means "Issuer", Buyer means "Purchaser", and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

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

(d) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. **[STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(e) Issuer Representations and Warranties.

Issuer represents and warrants:

(i) Issuer has the right to sell the Assigned Product from the Applicable Project;

(ii) Issuer has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Purchaser to any other person or entity;

(iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Issuer for resale to Purchaser hereunder is not being sold by Issuer back to the Applicable Project or PPA Seller;

(iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;

(v) The Assigned Product is free and clear of all liens or other encumbrances;

(vi) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1 Product in compliance with the California Long-Term Contracting Requirements, if applicable

(vii) The Assigned Product supplied to Purchaser under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and

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

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

(i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);

(ii) This Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;

(iii) The electricity transferred by this Agreement is transferred to

Purchaser in real time; and

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

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

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

(i) Issuer has relied exclusively upon the representations and warranties of each respective seller set forth in the Assigned Agreements in making the representations and warranties set forth in this Section 5.4 and has not performed any independent investigation with respect thereto;

(ii) MSES has agreed under the Prepaid Agreement to terminate or cause MSCG to terminate the applicable Assignment Period in the event that any representation or warranty in this Section 5.4 proves to be incorrect in any respect; and

(iii) Purchaser agrees that its sole recourse for any breach of the provisions of this Section 5.4 shall be the termination of the applicable Assignment Period and Purchaser shall have no other recourse against Issuer or remedies under this Agreement.

Section 5.5 Deliveries within CAISO or Another Balancing Authority. The Parties acknowledge that Energy delivered by Issuer at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Energy into the applicable Balancing Authority shall constitute delivery of such Energy to Purchaser hereunder.

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

## ARTICLE VI
## PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 Future PPA Assignments. In connection with the expiration or termination of an EPS Energy Period, each of the Parties agrees to satisfy its obligations under the Assignment Letter Agreement, including but not limited to (a) Purchaser's obligation to exercise Commercially Reasonable Efforts to assign a portion of Purchaser's rights and obligations under a power purchase agreement under which Project Participant is purchasing EPS Compliant Energy to MSCG or MSES pursuant to an Assignment Agreement and (b) the Parties' obligations to cooperate in good faith with MSCG and MSES with respect to any proposed assignments.

Section 6.2 Updates to Exhibits A-1 and A-2.

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect any changes in the Hourly Quantities of Base Energy and Monthly Quantities of Assigned Energy and any other changes in connection therewith.

## ARTICLE VII
## USE OF ENERGY

Section 7.1 Tax Exempt Status of the Bonds. Purchaser acknowledges that the Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its CCA System as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Purchaser further agrees that it will not at any time take any action, or fail to take any action, that would adversely affect the tax-exempt status of the Bonds.

Section 7.2 Priority Energy. Subject to Section 7.5(a), Purchaser agrees to take the Contract Quantities to be delivered under this Agreement (a) in priority over and in preference to all Non-Priority Energy; and (b) on at least a pari passu and non-discriminatory basis with other Priority Energy.

Section 7.3 Remarketing Sales .

(a) Remarketing of Assigned Energy. If notwithstanding Purchaser's compliance with Section 7.1, a quantity of Assigned Energy less than the Monthly Quantity is delivered hereunder in any Month for any reason, then (i) MSCG shall remarket such undelivered

quantity of Assigned Energy to the PPA Supplier at the Contract Price plus the Monthly Discount then in effect, and (ii) Purchaser shall remain responsible for the Project Administration Fee for such quantity of Assigned Energy not delivered hereunder. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Assigned Energy that is remarketed pursuant to the foregoing sentence.

(b) Remarketing of Base Energy. Consistent with Section 3.3, to the extent any portion of the Contract Quantity is Base Energy, Issuer shall cause MSES to remarket or purchase such Energy for the account of MSES under the remarketing provisions of the Prepaid Agreement, and Issuer shall credit against the amount owed by Purchaser for such Contract Quantities the amounts received from MSES for such remarketing services, less all directly incurred costs or expenses, including but not limited to remarketing administrative charges paid to MSES under the Prepaid Agreement, but in no event shall the amount of such credit be more than the Contract Price. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Base Energy that is remarketed pursuant to the foregoing sentence.

(c) MSES Remarketing Fees. Purchaser shall not in any case have an obligation to make a payment to Issuer with respect to any Remarketing Fee (as defined in the Prepaid Agreement) charged by MSES under the Prepaid Agreement

Section 7.4 Qualifying Use. Subject to Section 7.5, Purchaser agrees that, without limiting Purchaser's other obligations under this Article VII, it will use all of the Energy purchased under this Agreement in compliance with the Qualifying Use Requirements. Purchaser agrees that it will provide such additional information, records and certificates as Issuer may reasonably request to confirm Purchaser's compliance with this Section 7.4.

Section 7.5 Remediation. To the extent that (a) all or a portion of the Contract Quantity is remarketed under Section 7.3(a) or Section 7.3(b), (b) Purchaser has exercised Commercially Reasonable Efforts (as determined by Special Tax Counsel (as defined in the Bond Indenture)) to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement and (c) Purchaser is not otherwise in default under this Agreement, then:

(a) MSES shall be obligated under the remarketing provisions of the Prepaid Agreement to purchase the remarketed Energy for its own account at the Day-Ahead Market Price (the proceeds of any such purchases, "Disqualified Remarketing Proceeds"), which Disqualified Remarketing Proceeds are for the benefit of Purchaser in that such proceeds reduce its payment obligations hereunder;

(b) Purchaser shall (i) exercise Commercially Reasonable Efforts to use an amount equivalent to such Disqualified Remarketing Proceeds to purchase Non-Priority Energy and use such Non-Priority Energy in compliance with the Qualifying Use Requirements in order to remediate such Disqualified Remarketing Proceeds and (ii) apply its purchases of Non-Priority Energy to remediate Disqualified Remarketing Proceeds under this Agreement prior to remediating such proceeds under any other contract that provides for the purchase of Priority Energy;

(c) in order to track compliance with Purchaser's obligations under Section 7.5(b) above, Purchaser shall deliver a Remediation Certificate in the form of Exhibit H hereto to Issuer and MSES by the tenth day of the Month subsequent to any relevant Non-Priority Energy purchases (which may include purchases of Energy from CAISO to the extent such Energy is used in compliance with the Qualifying Use Requirements);

(d) for Disqualified Remarketing Proceeds remediated under this Section 7.5, Issuer shall pay Purchaser the Monthly Discount associated with such Disqualified Remarketing Proceeds on the last Business Day of the Month following the Month in which Purchaser provides a certificate under clause (c) evidencing such remediation; and

(e) to the extent any Disqualified Remarketing Proceeds are not remediated within twelve Months of the date on which such proceeds were received by Issuer, then MSES shall be obligated under the Prepaid Agreement to exercise Commercially Reasonable Efforts to remediate such Disqualified Remarketing Proceeds under the Prepaid Agreement and Purchaser's ability to remediate such remarketing proceeds shall be subject to MSES's successful remediation of such proceeds through sales to other purchaser(s);

provided that, for the avoidance of doubt, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time that Purchaser has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement, then Purchaser shall not be entitled to remediate any Disqualified Remarketing Proceeds related to the resulting remarketing of Base Energy by MSES.

## ARTICLE VIII
## REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS

Section 8.1 Representations and Warranties of the Parties. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) For Issuer as the representing Party, Issuer is a is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code;

(b) For Purchaser as the representing Party, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code, duly organized and validly existing under the Laws of the State of California;

(c) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(d) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its obligations under this Agreement or that questions the validity, binding effect or enforceability

hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(e) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(f) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(g) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(h) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Issuer, the lien of the Bond Indenture;

(i) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(j) it enters this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Warranty of Title. Issuer warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Purchaser, free and clear of all liens, encumbrances, and claims.

Section 8.3 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS ARTICLE VIII, ISSUER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.4 Continuing Disclosure. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer including its most recent audited financial statements for use in Issuer's offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its continuing disclosure undertakings under Rule 15(c)2-12 of the United States Securities and Exchange Commission. Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

## ARTICLE IX
## TAXES

Issuer shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Point, and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. Purchaser shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates.

## ARTICLE X
## DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such

damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Judicial Reference.

(a) Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "Dispute") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b) Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Party (the "Responding Party") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the "Negotiation Period"), then either Party may provide to the other Party written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two (2) referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of

either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if

rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(f) Expenses. Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

## ARTICLE XI
## FORCE MAJEURE

Section 11.1 Applicability of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 Settlement of Labor Disputes. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

## ARTICLE XII
## GOVERNMENTAL RULES AND REGULATIONS

Section 12.1 Compliance with Laws. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided*, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or

any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

## ARTICLE XIII
## ASSIGNMENT

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; *provided*, however, that, subject to Section 18.14, neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement without the prior written consent of the other Party. Prior to assigning this Agreement, Purchaser shall deliver to Issuer (i) written confirmation from each of the Applicable Rating Agencies, *provided* that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by the Applicable Rating Agencies to the Bonds; or (ii) written confirmation from each of the Applicable Rating Agencies, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by the Applicable Rating Agencies to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

## ARTICLE XIV
## PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Purchaser shall deliver to Issuer a statement (a "Purchaser's Statement") listing any other amounts due to Purchaser in connection with this Agreement with respect to the prior Month(s).

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Issuer shall deliver a statement (a "Billing Statement") to Purchaser indicating (i) the total amount due to Issuer for Energy delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Issuer or Purchaser. If the actual quantity delivered is not known by the Billing Date, Issuer may provisionally prepare a Billing Statement based on Issuer's best available knowledge of the quantity of Energy delivered, which shall not exceed the Monthly Quantity or the sum of the Hourly Quantities in such Month, as applicable, plus any make-up quantities delivered during such Month. The invoiced quantity and amounts

paid thereon (with interest calculated on the amount overpaid or underpaid by Purchaser at the Default Rate) will then be adjusted on the following Month's Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to the Trustee for the benefit of the Issuer by wire transfer (pursuant to the Trustee's instructions), in immediately available funds, on or before the 20th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser's instructions), in immediately available funds, on or before the 28th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the following Business Day.

(b) If Purchaser fails to issue a Purchaser's Statement with respect to any Month, Issuer shall not be required to estimate any amounts due to Purchaser for such Month, provided that Purchaser may include any such amount on subsequent Purchaser's Statements issued within the next sixty (60) days. The sixty (60) day deadline in this subsection (b) replaces the two (2) year deadline in Section 14.5(b) with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts; Correction of Index Price.

(a) If Purchaser disputes any amounts included in the Issuer's Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Purchaser may have; *provided*, however, that Purchaser shall have the right, after payment, to dispute any amounts included in a Billing Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5. If Issuer disputes any amounts included in the Purchaser's Statement, Issuer may withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

(b) If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within 30 days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than 30 days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the

period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 14.4 Late Payment. If Purchaser fails to remit the full amount payable within one Business Day of when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Purchaser's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Purchaser's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within thirty (30) days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on an incorrect Billing Statement shall bear interest at the Default Rate from the date such payment was made.

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Section 14.7 Source of Purchaser's Payments. Purchaser covenants and agrees to make payments due hereunder from CCA Revenues, and only from such CCA Revenues, as an operating expense of its CCA System; *provided*, however, that Purchaser may apply any legally available monies to the payment of amounts due hereunder.

Section 14.8 Rate Covenant. Purchaser hereby covenants and agrees that it will establish, fix, prescribe, maintain, and collect rates, fees, and charges from the customers of its CCA System so as to provide CCA Revenues sufficient to enable Purchaser to pay any other amounts legally payable from CCA Revenues, and to maintain any required reserves for Purchaser's CCA System. Purchaser further covenants and agrees that it shall not furnish or supply Energy services free of charge to any Person, except any such service free of charge that Purchaser is supplying on the

date hereof as has been specifically identified by Purchaser to Issuer in writing, and it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of Energy to its customers. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to make any payments hereunder except from CCA Revenues.

Section 14.9 Pledge of CCA Revenues. Purchaser shall not grant any lien on or security interest in, or otherwise pledge or encumber, the CCA Revenues if the terms or effect of such lien, pledge or other encumbrance results in such lien, pledge or other encumbrance having priority over the obligations of Purchaser to pay the Contract Price, which obligations constitute operating expenses of Purchaser.

Section 14.10 Financial Responsibility. When reasonable grounds for insecurity of payments due under this Agreement arise, Issuer may demand, and Purchaser shall provide within 48 Hours but at least one Business Day 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. In the event Issuer is entitled to demand adequate assurance of performance under this Section 14.10, Issuer may demand at a minimum a prepayment by Purchaser of an amount equal to (a) the amount owed by Purchaser with respect to all Energy delivered by Issuer to Purchaser as of the date of the demand for Adequate assurance of performance, plus (b) the amount, as determined and adjusted from time to time by Issuer (with the input of MSES pursuant to the Receivables Purchase Provisions (as defined in the Bond Indenture)) in a Commercially Reasonable manner, expected to be owed by Purchaser with respect to the Energy to be delivered by Issuer to Purchaser during the remainder of the then-current Month and the following Month. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend its performance under this Agreement, including the making of deliveries of Energy to Purchaser, immediately upon written notice and shall not be obligated to restore such performance until the later of (i) the first day of the Month after such demand has been satisfied, and (ii) the completion of the term of deliveries to any replacement sales customer to which MSES has remarketed the Energy on behalf of Issuer.

## ARTICLE XV
## [RESERVED]

## ARTICLE XVI
## NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to the other Party (or to a third party) shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic

means or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

## ARTICLE XVII
## DEFAULT; REMEDIES; TERMINATION

Section 17.1 Issuer Default. Each of the following events shall constitute an "Issuer Default" under this Agreement:

(a) any representation or warranty made by Issuer in this Agreement proves to have been incorrect in any material respect when made; or

(b) Issuer fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following the earlier of (i) receipt by Issuer of notice thereof or (ii) an officer of Issuer obtaining actual knowledge of such default.

Section 17.2 Purchaser Default. Each of the following events shall constitute a "Purchaser Default" under this Agreement:

(a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for one (1) Business Day following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default;

(b) Purchaser (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its of assets and such secured party maintains

possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

(c) any representation or warranty made by Purchaser in this Agreement proves to have been incorrect in any material respect when made; or

(d) Purchaser fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than fifteen (15) days following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default.

Section 17.3 Remedies Upon Default.

(a) Termination. If at any time an Issuer Default or a Purchaser Default has occurred and is continuing, then the non-defaulting Party may do any or all of the following (i) by notice to the defaulting Party specifying the relevant Issuer Default or Purchaser Default, as applicable, terminate this Agreement effective as of a day not earlier than the day such notice is deemed given under Article XVI and/or (ii) declare all amounts due to the non-defaulting Party under this Agreement or any part thereof immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of intent to demand, protest or other formalities of any kind, all of which are hereby expressly waived by the defaulting Party; *provided*, however, this Agreement shall automatically terminate and all amounts due to the non-defaulting Party hereunder shall immediately become due and payable as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition that upon the occurrence of a Purchaser Default specified in Section 17.2(b)(iv) or, to the extent analogous thereto, Section 17.2(b)(viii). In addition, during the existence of an Issuer Default or a Purchaser Default, as applicable, the non-defaulting Party may exercise all other rights and remedies available to it at Law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of this Agreement.

(b) Additional Remedies. In addition to the remedies set forth in Section 17.3(a) (and without limiting any other provisions of this Agreement), during the existence of any Purchaser Default, Issuer may suspend its performance hereunder and discontinue the supply of all or any portion of the Energy otherwise to be delivered to Purchaser by it under this Agreement. If Issuer exercises its right to suspend performance under this Section 17.3(b), Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Agreement. Deliveries of Energy may only be reinstated, at a time to be determined by Issuer, upon (i) payment in full by Purchaser of all amounts then due and payable under this Agreement and (ii) payment in advance by Purchaser at the beginning of each Month of amounts estimated by Issuer to be due to Issuer for the future delivery of Energy under this Agreement for such Month. Issuer may continue to require payment in advance from Purchaser after the reinstatement of Issuer's supply services under this Agreement for such period of time as Issuer in its sole discretion may determine is appropriate. In addition, and without

limiting any other provisions of or remedies available under this Agreement, if Purchaser fails to accept from Issuer any Energy tendered for delivery under this Agreement, Issuer shall have the right to sell such Energy to third parties on any terms that Issuer, in its sole discretion, determines are appropriate.

(c) Effect of Early Termination. As of the effectiveness of any termination date in accordance with clause (i) of Section 17.3(a), (i) the Delivery Period shall end, (ii) the obligation of Issuer to make any further deliveries of Energy to Purchaser under this Agreement shall terminate, and (iii) the obligation of Purchaser to receive deliveries of Energy from Issuer under this Agreement will terminate. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII. Without prejudice to any payment obligation in respect of periods prior to termination, no payments will be due from either Party in respect of periods occurring after the effective termination date of this Agreement.

Section 17.4 Termination of Prepaid Agreement. Purchaser acknowledges and agrees that (i) in the event the Prepaid Agreement terminates for any reason prior to the end of the Delivery Period, this Agreement shall terminate on the effective date of early termination of the Prepaid Agreement (which date shall be the last date upon which deliveries are required thereunder, subject to all winding up arrangements) and (ii) Issuer's obligation to deliver Energy under this Agreement shall terminate upon the termination of deliveries of Energy to Issuer under the Prepaid Agreement. Issuer shall provide notice to Purchaser of any early termination date of the Prepaid Agreement. The Parties recognize and agree that, in the event that the Prepaid Agreement terminates because of a Failed Remarketing (as defined in the Bond Indenture) of the Bonds that occurs in the first Month of a Reset Period, Issuer shall deliver Energy under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, no Monthly Discount or Annual Refunds shall be associated with such deliveries and the Contract Price shall be adjusted accordingly.

Section 17.5 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY

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

## ARTICLE XVIII
## MISCELLANEOUS

Section 18.1 Indemnification Procedure. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys' fees and experts' fees and to post any appeals bonds; *provided*, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 Deliveries. Contemporaneously with this Agreement (unless otherwise specified): Each Party shall deliver to the other Party evidence reasonably satisfactory to it of (i) such Party's authority to execute, deliver and perform its obligations under this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement on behalf of such Party;

(a) as of the date hereof, Purchaser shall deliver to Issuer a fully executed Federal Tax Certificate in the form attached hereto as Exhibit D;

(b) on the Bond Closing Date, Purchaser shall deliver to Issuer an opinion of counsel to Purchaser in the form attached hereto as Exhibit E;

(c) on the Bond Closing Date, Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth hereto as Exhibit G.

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There

are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Each Party represents and covenants to and agrees with the other Party that it is not entitled to and shall not assert the defense of sovereign immunity or governmental immunity with respect to its obligations or any Claims under this Agreement, and

each hereby waives any such defense of sovereign or governmental immunity to the full extent permitted by Law.

Section 18.11 Rates and Indices. If the source of any publication used to determine the index or other price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, an alternative index or other price will be used based on the determinations made by Issuer and MSES under Section 18.11 of the Prepaid Agreement. Issuer shall provide Purchaser the opportunity to provide its recommendations and other input to Issuer for Issuer's use in the process for selecting such alternative index or other price under Section 18.11 of the Prepaid Agreement.

Section 18.12 Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Third Party Beneficiaries; Rights of Trustee. Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the amounts payable by Purchaser under this Agreement (other than amounts payable in respect of the Project Administration Fee) to secure Issuer's obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Purchaser's obligations under this Agreement, (c) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (d) in the event of any Purchaser Defaults under Section 17.2(a), (i) MSES may, to the extent provided for in, and in accordance with, the Receivables Purchase Provisions (as defined in the Bond Indenture), take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and shall thereafter have all rights of collection with respect to such receivables, and (ii) if such receivables are not so assigned, the Commodity Swap Counterparty (as defined in the Bond Indenture) shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer to the Commodity Swap Counterparty 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: _____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

**EXHIBIT A-1**
**BASE ENERGY HOURLY QUANTITIES**

[To come.]

**EXHIBIT A-2**
**EPS ENERGY PERIOD MONTHLY QUANTITY**

[To come.]

**EXHIBIT B**
**NOTICES**

| | |
|---|---|
| **IF TO ISSUER:** | California Community Choice Financing Authority<br>1125 Tamalpais Avenue<br>San Rafael, CA 94901<br>Email: [____] |
| **IF TO PURCHASER:** | East Bay Community Energy Authority<br>1999 Harrison Street, Suite 800<br>Oakland, CA 94612<br>Email: powernotices@ebce.org |
| Energy Related: | powersettlements@ebce.org |
| Invoicing/Payments: | ap@ebce.org; powersettlements@ebce.org |

**EXHIBIT C**
**FORM OF REMARKETING ELECTION NOTICE**

[_____]

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

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

To the Addressees:

The undersigned, duly authorized representative of East Bay Community Energy Authority (the "Purchaser"), is providing this notice (the "Remarketing Election Notice") pursuant to the Power Supply Contract, dated as of [____], 2022 (the "Supply Contract"), between California Community Choice Financing Authority and Purchaser. Capitalized terms used herein shall have the meanings set forth in the Supply Contract.

Pursuant to Section 3.4(b) of the Supply Contract, the Purchaser has elected to have its Contract Quantity for the applicable Reset Period remarketed beginning as of the commencement of such Reset Period. The resumption of deliveries in any future Reset Period shall be in accordance with Section 3.4(d) of the Supply Contract.

Given this [___] day of [_____], 20[__].

East Bay Community Energy Authority

By: _____
Printed Name:
Title:

**EXHIBIT D**

**FORM OF FEDERAL TAX CERTIFICATE**

This Federal Tax Certificate is executed in connection with the Power Supply Contract dated as of [_____], 2022 (the "Supply Contract"), by and between California Community Choice Financing Authority ("Issuer") and East Bay Community Energy Authority ("Purchaser"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Contract or in the Bond Indenture.

WHEREAS Purchaser acknowledges that Issuer is issuing the Bonds to fund the prepayment price under the Prepaid Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Purchaser's use of Energy acquired pursuant to the Supply Contract and certain funds and accounts of Purchaser will affect the Bonds' qualification for such tax exemption.

NOW, THEREFORE, PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Purchaser is a community choice aggregator organized as a joint powers authority under the laws of the State of California. As a community choice aggregator, the Purchaser is a load-serving entity providing electricity to customers within the boundaries of cities and/or counties that have elected to participate in Purchaser's community choice aggregation program. For purposes of this Certificate, the term "service area" of the Purchaser means the boundaries of the cities and/or counties that have elected to participate in the Purchaser's community choice aggregation program, as well as any other area recognized as the service area of the Purchaser under state or federal law.

2. Purchaser will resell all of the Energy acquired pursuant to the Supply Contract to its retail Energy customers within its service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs or under authorized requirements contracts.

3. From [___, __] to [____, 2022] the annual average amount of Energy purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser is [_____] MWh. Over the term of the Supply Contract, the Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Purchaser who are located within the service area of the Purchaser to be at least [_____] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Supply Contract is [_____] MWh. The annual average amount of Energy which Purchaser otherwise has a right to acquire as of the Closing Date (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) is [_____] MWh. The sum of (a) the maximum amount of Energy in any year being acquired pursuant to the Supply Contract, and (b) the amount of Energy that Purchaser otherwise has a right to acquire (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) in the year described in the foregoing clause

(a), is [_____] MWh. Accordingly, the amount of Energy to be acquired under the Supply Contract by Purchaser, supplemented by the amount of Energy otherwise available to Purchaser as of the Closing Date, during any year does not exceed [___]% of the expected annual average amount of Energy to be purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser.

3. In the event of the expiration or termination of an EPS Energy Period, Purchaser agrees to comply with its obligations under the Assignment Letter Agreement, including but not limited to its obligations to (a) exercise Commercially Reasonable Efforts to assign a portion of Purchaser's rights and obligations under a power purchase agreement under which Purchaser is purchasing EPS Compliant Energy to MSCG or MSES pursuant to an Assignment Agreement and (b) cooperate in good faith with Issuer, MSCG and MSES with respect to any proposed assignments.

4. Purchaser expects to pay for Energy acquired pursuant to the Supply Contract solely from funds derived from its operations as a community choice aggregator. Purchaser expects to use current CCA Revenues of its CCA System to pay for current Energy acquisitions. Neither the Purchaser nor any person who is a related party to the Purchaser will hold any funds or accounts in which monies are set aside and invested and which are reasonably expected to be used to pay for Energy more than one year after such monies are set aside. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Purchaser or any persons who are related Persons to Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

_____, 2022

By: _____
[Name]
[Title]

**EXHIBIT E**
**FORM OF OPINION OF COUNSEL TO PURCHASER**

California Community Choice Financing Authority
San Rafael, CA

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

Morgan Stanley
New York, NY

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

[Royal Bank of Canada]
[Toronto, Ontario]

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

Ladies and Gentlemen:

We are Counsel to East Bay Community Energy Authority ("Purchaser"). Purchaser is a Purchaser in the Energy Project undertaken by California Community Choice Financing Authority ("Issuer"). We are furnishing this opinion to you in connection with the Power Supply Contract between Issuer and Purchaser dated as of [____], 2022 (the "Supply Contract").

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning as is ascribed to them in the Supply Contract.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

(a) The Constitution and laws of the State of California (the "State") including, as applicable, acts, ordinances, certificates, articles, charters, bylaws, and agreements pursuant to which Purchaser was created and by which it is governed;

(b) Resolution No. [__], duly adopted by Purchaser on [_____] (the "Resolution") and certified as true and correct by certificate and seal, authorizing Purchaser to execute and deliver the Supply Contract;

(c) A copy of the Supply Contract executed by Purchaser; and

(d) All outstanding instruments relating to bonds, notes, or other indebtedness of or relating to Purchaser and Purchaser's CCA System (as defined in the Supply Contract).

We have also examined and relied upon originals or copies, certified or otherwise authenticated to our satisfaction, of such records, documents, certificates, and other instruments, and made such investigations of law, as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

Based upon the foregoing, we are of the opinion that:

1. Purchaser is a joint powers authority of the State, duly organized and validly existing as a community choice aggregator under the laws of the State, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under the Agreement.

2. The execution, delivery, and performance by Purchaser of the Supply Contract have been duly authorized by the governing body of Purchaser and do not and will not require, subsequent to the execution of the Supply Contract by Purchaser, any consent or approval of the governing body or any officers of Purchaser.

3. The Supply Contract is the legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

4. No approval, consent or authorization of any governmental or public agency, authority, commission or person, or, to our knowledge, of any holder of any outstanding bonds or other indebtedness of Purchaser, is required with respect to the execution, delivery and performance by Purchaser of the Supply Contract or Purchaser's participation in the transactions contemplated thereby other than those approvals, consents and/or authorizations that have already been obtained.

5. The authorization, execution and delivery of the Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) to our knowledge will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

6. Purchaser is not in breach of or default under any applicable constitutional provision or any law or administrative regulation of the State or the United States or any applicable judgment or decree or, to our knowledge, any loan or other agreement, resolution, indenture, bond, note, resolution, agreement or other instrument to which Purchaser is a party or to which Purchaser or any of its property or assets is otherwise subject, and to our knowledge no event has occurred

and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument.

7. Payments to be made by Purchaser under the Supply Contract shall constitute operating expenses of Purchaser's CCA System payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.

8. As of the date of this opinion, to the best of our knowledge after due inquiry, there is no pending or threatened action or proceeding at law or in equity or by any court, government agency, public board or body affecting or questioning the existence of Purchaser or the titles of its officers to their respective offices or affecting or questioning the legality, validity, or enforceability of this Supply Contract nor to our knowledge is there any basis therefor.

This opinion is rendered solely for the use and benefit of the addressees listed above in connection with the Supply Contract and may not be relied upon other than in connection with the transactions contemplated by the Supply Contract, or by any other person or entity for any purpose whatsoever, nor may this opinion be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity, without the prior written consent of the undersigned.

Very truly yours,

**EXHIBIT F**

**MONTHLY DISCOUNT**

| | |
|---|---|
| Monthly Discount: | $[____]/MWh |

**EXHIBIT G**
**FORM OF CLOSING CERTIFICATE**

**CLOSING CERTIFICATE OF PURCHASER**

_____, 2022

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

The undersigned _____ of East Bay Community Energy Authority (the *"Purchaser"*), hereby certifies as follows in connection with the Power Supply Contract dated as of _____, 2022 (the *"Agreement"*) between the Purchaser and California Community Choice Financing Authority ("*Issuer*") and the issuance and sale by Issuer of the above-referenced bonds (the *"Bonds"*) (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

1. Purchaser is a community choice aggregator, duly created and validly existing as a joint powers authority, and is in good standing, under the laws of the State of California (the *"State"*), and has the corporate power and authority to enter into and perform its obligations under the Agreement.

2. By all necessary official action on its part, the Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Purchaser of the obligations on its part contained in the Agreement, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.

3. The Agreement constitutes the legal, valid and binding obligation of the Purchaser.

4. The authorization, execution and delivery of the Agreement and compliance with the provisions on the Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default under (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

5 The Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or to which the Purchaser or any of its property or

assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Purchaser under any of the foregoing.

6. Payments to be made by the Purchaser under the Agreement shall constitute operating expenses of the Purchaser's CCA System (as defined in the Agreement) payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of the Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Purchaser in any court or administrative body which would (a) contest the right of the officials of the Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Purchaser, (c) contest the validity, due authorization and execution of the Agreement or (d) attempt to limit, enjoin or otherwise restrict or prevent the Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of the Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Purchaser of its obligations under the Agreement have been duly obtained.

9. The representations and warranties of the Purchaser contained in the Agreement were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to the Purchaser contained in the Official Statement dated _____, 2022 with respect to the Bonds, including Appendix B thereto (the *"Official Statement"*), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. No event affecting the Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with respect to the Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

EAST BAY COMMUNITY ENERGY AUTHORITY

By_____

Name:

Title:

**EXHIBIT H**

**FORM OF REMEDIATION CERTIFICATE**

[_____], 20__

[_____]

Morgan Stanley Energy Structuring, L.L.C.
1585 Broadway
New York, NY 10036-8293
Attn: Miscellaneous Notices
Email: [CCCFA_2022a_mses_notices@morganstanley.com]

Re: Power Supply Contract with California Community Choice Financing Authority: Section 7.5 Remediation

To the addressees:

The undersigned, duly authorized representative of East Bay Community Energy Authority ("Purchaser"), hereby certifies as follows in connection with the Power Supply Contract, dated as of [____], 2022 (the "Contract"), between Purchaser and California Community Choice Financing Authority and remediation of Disqualified Remarketing Proceeds pursuant to Section 7.5 of the Contract. Capitalized terms used herein shall have the meanings set forth in the Contract.

Set forth as Attachment 1 hereto is a copy of Purchaser's invoice for the Month of [____] for purchases of Energy from [____] ***[NOTE: Insert reference to supplier.]*** pursuant that certain [____] ***[NOTE: Insert reference to applicable supply agreement.]***, and all of such Energy was used in compliance with the Qualifying Use Requirements.

In witness whereof the undersigned has executed this Certificate on and as of the date first written above.

EAST BAY COMMUNITY ENERGY AUTHORITY

By _____
[Name]
[Title]

# LETTER AGREEMENT

[____], 2022

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612
Email: powernotices@ebce.org

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

Re: PPA Assignments for Delivery under Prepay Energy Agreements

Ladies and Gentlemen:

This Letter Agreement (this "Letter Agreement") confirms our mutual agreement with respect to the matters set forth below and relates to (i) that certain Power Supply Contract (the "Power Supply Contract"), dated as of the date hereof, by and between California Community Choice Financing Authority ("Issuer") and East Bay Community Energy Authority ("Project Participant"), (ii) that certain Prepaid Energy Sales Agreement (the "Prepaid Agreement"), dated as of the date hereof, by and between Morgan Stanley Energy Structuring, L.L.C. ("MSES") and Issuer, and (iii) that certain Energy Management Contract (together with the Power Supply Contract and the Prepaid Agreement, the "Prepay Energy Agreements"), dated as of the date hereof, by and between Morgan Stanley Capital Group Inc. ("MSCG") and MSES. Any capitalized term used in this Letter Agreement and not otherwise defined herein shall have the meaning assigned to such term in the Power Supply Contract. In consideration of each party's execution of the respective Prepay Energy Agreements, as well as the premises above and the mutual covenants and agreements set forth herein, Issuer, Project Participant, MSES and MSCG (collectively, the "Parties") agree as follows:

1. **PPA Assignments for Delivery under Prepay Energy Agreements**.

(a) Initial Assignment. Concurrently with the execution of the Prepay Energy Agreements, Project Participant has assigned and MSES has agreed to assume a portion of Project Participant's rights and obligations under the Initial Assigned PPA.

(b) Replacement Assignments. Commencing (i) six months prior to the expiration of any EPS Energy Period or the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract or (ii) otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, Project Participant shall exercise Commercially Reasonable Efforts to assign a portion of Project Participant's rights and obligations (the "Assigned Rights and Obligations") under one or more power purchase agreements under which Project Participant is purchasing EPS Compliant Energy pursuant

to an Assignment Agreement substantially in the form of (A) the Limited Assignment Agreement set forth as Exhibit A hereto if the PPA Supplier is an unrelated third party or (B) the Limited Assignment Agreement set forth as Exhibit B hereto if the PPA Supplier is MSCG, and the Parties shall cooperate in good faith with respect to any proposed assignments; provided that

(1) any subsequent Assignment Agreement shall provide (I) for the assignment by Project Participant to either (a) MSES if MSCG is the PPA Supplier or (b) MSCG if the PPA Supplier is an unrelated third party of its right to receive a portion of the Energy (and any associated products set forth in the Assignment Agreement) delivered under the applicable power purchase agreement for each Month of the applicable EPS Energy Period and (II) for payment by MSES or MSCG as applicable to the PPA Supplier under such subsequent power purchase agreement of the Day-Ahead Average Price for each Month of the applicable EPS Energy Period, with such amounts to be credited in the PPA Supplier's monthly invoice to Project Participant against other amounts owed by Project Participant under the Assigned PPA during the EPS Energy Period;

(2) any third party PPA Supplier must satisfy MSCG's internal credit and approval requirements and other requirements applied on a nondiscriminatory basis, including any "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies;

(3) any such assignment must be agreed and consented to by Project Participant, MSES and MSCG in their reasonable discretion; and

(4) the Parties recognize that MSCG will be obligated to sell and deliver Assigned Product it receives from a third party PPA Supplier to MSES under the Energy Management Agreement; MSES will be obligated to deliver Assigned Product that it acquires to Issuer under the terms of the Prepaid Agreement; and Issuer will be obligated to deliver Assigned Product that it acquires to Project Participant under the terms of the Power Supply Contract.

(c) MSCG Procurement of EPS Compliant Energy. To the extent that (i) Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement by the date that is 75 days prior to (A) the end of any EPS Energy Period or (B) the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract, or (ii) an early termination of an EPS Energy Period has occurred and Project Participant, MSES and MSCG have not agreed upon a replacement assignment of a power purchase agreement, then MSCG shall exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Project Participant, provided that:

(1) Project Participant must consent to MSCG's procurement of any such EPS Compliant Energy for ultimate redelivery to Project Participant, with such consent not to be unreasonably withheld;

(2) the Parties shall act in good faith and in a Commercially Reasonable manner to negotiate any necessary amendments to the Prepay Energy Agreements to facilitate the delivery of such EPS Compliant Energy; and

(3) the period of delivery for any such EPS Compliant Energy (any such period, a "MSCG EPS Energy Period") shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in a subsequent Reset Period.

(d) Tax Opinion. The Parties acknowledge and agree that their ability to enter into a new Reset Period will be contingent on obtaining an Opinion of Bond Counsel (as defined in the Bond Indenture), which will be dependent on the availability of EPS Compliant Energy for delivery in such Reset Period.

2. **Failure to Obtain EPS Compliant Energy**. To the extent an EPS Energy Period terminates or expires and Project Participant and MSCG have been unable to obtain EPS Compliant Energy for delivery under the Prepay Energy Agreements pursuant to the provisions of Paragraph 1, then MSES shall remarket the Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement, subject to the following:

(a) the Parties' obligations set forth in Paragraph 1 shall continue to apply;

(b) Project Participant shall not make any new commitment to purchase Priority Energy during such a remarketing; and

(c) consistent with Section 7.5 of the Power Supply Contract, Project Participant shall exercise Commercially Reasonable Efforts to remediate any 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.

(b) **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

(c) **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

(d) **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(e) **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

(g) **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

(h) **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

4. **Counterparts**. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

5. **Costs and Expenses**. The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

6. **Amendments**. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

7. **Notices**. Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon written 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

8. **Dispute Resolution**.

(a) **Governing Law**. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of Project Participant and Issuer to enter into and perform their obligations under this Agreement shall be determined in accordance with the laws of the State of California.

(b) **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**")

pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and Project Participant shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "**chairperson**") within thirty (30) days of the commencement of the arbitration. If either MSCG or Project Participant is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If MSCG and Project Participant-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 8(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 8(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) **Judicial Reference.** Without limiting the provisions in Section 8(b), if Section 8(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 8(c)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within ten (10) Days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for

such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty (60) Days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 8(c).

ii. Applicability; Selection of Referees.

(A) Within ten days of the delivery of an Impasse Notice, each of MSCG and Project Participant shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed Referees**") shall appoint a third referee (the "**Third Referee**"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(B) If the Party-Appointed Referees are unable to agree on the Third Referee within forty-five (45) Days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "**Court**"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of Project Participant and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within twenty (20) days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within one hundred eighty (180) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of MSCG and Project Participant shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and Project Participant.

9. **Limitation of Liability**. Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

***[Signature Pages to Follow]***

Very truly yours,

**MSES**

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

**MSCG**

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name: _____
Title: _____

ACKNOWLEDGED, ACCEPTED AND AGREED TO as of the date first set forth above:

**PARTICIPANT**

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

**ISSUER**

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

# EXHIBIT A

## FORM OF LIMITED ASSIGNMENT AGREEMENT FOR THIRD PARTY AS PPA SUPPLIER

This Limited Assignment Agreement (this "**Agreement**") is entered into as of [____] by and among [____], a [____] ("**PPA Seller**"), East Bay Community Energy Authority, a joint powers authority and a community choice aggregator organized under the laws of the State of California ("**PPA Buyer**"), and Morgan Stanley Capital Group Inc., a Delaware corporation ("**MSCG**").

## RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain [____], dated as of [____] (the "**PPA**");

WHEREAS, in connection with a prepaid electricity transaction between [_____] (**"Issuer"**) and Morgan Stanley Energy Structuring, L.L.C. ("**MSES**"), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, MSCG will receive the Assigned Product and MSCG will deliver the Assigned Product to MSES, which will redeliver the Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, MSCG will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the "**Parties**" hereto; each is a "**Party**") agree as follows:

## AGREEMENT

### 1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"**Agreement**" has the meaning specified in the first paragraph above.

"**Assigned Delivery Point**" has the meaning specified in Appendix 1.

"**Assigned Energy**" means any Electricity associated with the Assigned Product to be delivered to MSCG hereunder pursuant to the Assigned Rights and Obligations.

"**Assigned Monthly Quantity**" means the first [___] MWhs delivered in accordance with the PPA by PPA Seller in each Month during the Assignment Period.

"**Assigned Product**" includes all (i) Energy and (ii) Green Attributes (PCC1) (as defined in the PPA) produced by the Facility (as defined in the PPA) associated with the Assigned Monthly Quantity.

"**Assigned Product Price**" means **[NOTE: To be the Day-Ahead Price averaged for each day of the prior month if the assignment occurs after the commencement of the prepay transaction or the fixed price for energy under the PPA if assigned in connection with execution of the prepay transaction.]**.

"**Assigned Rights and Obligations**" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Monthly Quantity of Assigned Product in each Month during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSCG hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

"**Assignment Early Termination Date**" has the meaning specified in Section 5(b).

"**Assignment Period**" has the meaning specified in Section 5(a).

"**Assignment Period End Date**" means 11:59:59 p.m. pacific prevailing time on [____].

"**Assignment Period Start Date**" means [_____].

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

"**Claims**" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"**Delivered Product Payment Obligation**" has the meaning specified in Section 3(a).

"**Electricity**" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"**Government Agency**" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

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

ii. PPA Buyer shall remain solely responsible for any payment obligations other than the Delivered Product Payment Obligation due under the PPA during the Assignment Period (the "**Retained Payment Obligation**"). Any Claims arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

iii. Promptly following PPA Buyer's receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than seven days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG (ii) a statement to each of MSCG and the custodian described below indicating (A) the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

(b) **Scheduling**. All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to MSCG upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSCG's agent with regard to scheduling Assigned Energy; provided, however, that PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs; and (iv) (A) PPA Buyer and PPA Seller will provide copies to MSCG of (I) any notice of force majeure delivered under the PPA and (II) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in a default; (B) PPA Seller will provide copies to MSCG of annual forecasts and monthly forecasts and generation reports delivered under the PPA; and (C) PPA Buyer and PPA Seller, as applicable, will provide copies to MSCG of any other information reasonably requested by MSCG relating to Assigned Product.

(c) **Amendments**. PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG's rights or obligations under this Agreement until and unless MSCG receives written notice thereof.

(d) **Setoff of Receivables**. Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSCG pursuant to the Assigned Rights and Obligations, MSES may sell such Receivables to MSCG and MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such

Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

**4. Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

**5. Assignment Period; Assignment Early Termination**.

(a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.

(b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;

ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;

iii. the election of MSCG in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSCG's rights or obligations under this Agreement (provided that MSCG shall not have a right to terminate under this clause (b) to the extent that MSCG (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by MSCG to PPA Buyer and PPA Seller;

iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if MSCG fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSCG of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;

vi. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSCG seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSCG commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSCG consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSCG or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSCG, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSCG or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSCG and PPA Buyer have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations hereunder immediately following the termination hereof, which Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the "Assignment Period" under the replacement Assignment Agreement as specified in the notice from MSCG or PPA Buyer to the other Parties; and

viii. PPA Buyer may deliver written notice of termination to the other Parties if any change, event or effect occurs, including but not limited a change in applicable laws or regulations, any issues with the PPA Seller or the PPA, a dispute under the PPA or other similar circumstance, that individually or collectively have or are reasonably expected by

PPA Buyer to have a material adverse effect upon (A) the PPA Buyer, (B) its rights and obligations under this Agreement, the Prepay Power Supply Contract, or the PPA, or (C) the benefit the PPA Buyer is receiving by assigning the Assigned Rights and Obligations, with such Assignment Early Termination Date to be the date set forth in a written notice delivered by PPA Buyer to the other Parties; provided that (x) PPA Buyer will provide notice to the other Parties as soon as is reasonably possible that PPA Buyer anticipates exercising this termination right, and (y) PPA Buyer shall exercise commercially reasonable efforts to propose and agree with MSCG upon a replacement Assignment Agreement prior to exercising this termination right.

(c) **Reversion of Assigned Rights and Obligations**. The parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date the Assigned Rights and Obligations will revert from MSCG to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from MSCG to PPA Buyer, provided that (i) MSCG shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSCG prior to the Assignment Early Termination Date, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date.

**6. Representations and Warranties**.

(a) **Copy of PPA**. PPA Seller and PPA Buyer represent and warrant to MSCG that a true, complete, and correct copy of the PPA is attached hereto as Appendix 3.

(b) **No Default**. PPA Seller and PPA Buyer represent and warrant to MSCG that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSCG that:

i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations**. Each Party represents to each of the other Parties:

i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this

Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and

understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

**7. Counterparts**.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

**8. Costs and Expenses**.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

**9. Amendments**.

No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by an electronic transmission) and executed by each of the Parties or confirmed by emails or electronic messages on an electronic messaging system.

**10. Notices**.

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

**11. Miscellaneous**.

(a) **Governing Law**. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA

Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) **U.S. Resolution Stay.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("**ISDA U.S. Stay Protocol**"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSCG shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any 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) 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:_____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name:_____
Title:_____

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name:_____
Title:_____

**Appendix 1**
**Assigned Rights and Obligations**

**PPA:** Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller

**Assigned Delivery Point: [**Facility PNode/Settlement Point (as defined in the PPA)**]**

**Further Information**: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

[Include additional requirements, if any]

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

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

# EXHIBIT B

## FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER

This Limited Assignment Agreement (this "**Agreement**") is entered into as of [____] by and among Morgan Stanley Capital Group Inc., a Delaware corporation ("**PPA Seller**"), East Bay Community Energy Authority, a joint powers authority and a community choice aggregator organized under the laws of the State of California ("**PPA Buyer**"), California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("**Issuer**"), and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("**MSES**").

## RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain [____], dated as of [____] (the "**PPA**");

WHEREAS, in connection with a prepaid electricity transaction between Issuer and MSES, and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSES, and MSES wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, MSES will receive the Assigned Product and MSES will deliver the Assigned Product to MSES, which will redeliver the Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, MSES will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Issuer, PPA Seller, PPA Buyer and MSES (the "**Parties**" hereto; each is a "**Party**") agree as follows:

## AGREEMENT

### 1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"**Agreement**" has the meaning specified in the first paragraph above.

"**Assigned Delivery Point**" has the meaning specified in Appendix 1.

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

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

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

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

"**Assigned Rights and Obligations**" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Quantity of Assigned Product during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSES hereunder.

"**Assignment Early Termination Date**" has the meaning specified in Section 5(b).

"**Assignment Period**" has the meaning specified in Section 5(a).

"**Assignment Period End Date**" means 11:59:59 p.m. pacific prevailing time on [____].

"**Assignment Period Start Date**" means [_____].

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

"**Claims**" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"**Delivered Product Payment Obligation**" has the meaning specified in Section 3(a).

"**Electricity**" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"**Government Agency**" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"**Issuer**" has the meaning specified in the first paragraph of this Agreement.

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

"**Month**" means a calendar month.

"**MSES**" has the meaning specified in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

"**PPA Buyer**" has the meaning specified in the first paragraph of this Agreement.

"**PPA Seller**" has the meaning specified in the first paragraph of this Agreement.

"**Prepaid Agreement**" means that certain Prepaid Energy Sales Agreement dated as of [____] 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 MSES all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSES the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and Obligations to MSES and the exercise and performance by MSES of the Assigned Rights and Obligations during the Assignment Period.

(c) MSES hereby accepts such assignment, transfer and conveyance of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

**3. Limited Assignment**.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**", and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation; Invoicing**.

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

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

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

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

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

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSES, and each such invoice shall indicate (A) the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number; provided in addition that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice will be resolved solely between PPA Buyer and PPA Seller. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

(b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSES, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Scheduling**. All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to MSES upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSES at the same point where title is passed to MSES pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSES's agent with regard to scheduling Assigned Energy; provided, however, that PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs; and (iv) (A) PPA Buyer and PPA Seller will provide copies to MSES of (I) any notice of force majeure delivered under the PPA and (II) any notice of a default or of a breach

or other event that, if not cured within an applicable grace period, could result in a default; (B) PPA Seller will provide copies to MSES of annual forecasts and monthly forecasts and generation reports delivered under the PPA; and (C) PPA Buyer and PPA Seller, as applicable, will provide copies to MSES of any other information reasonably requested by MSES relating to Assigned Product.

(d) **Amendments**. PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSES relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSES's rights or obligations under this Agreement until and unless MSES receives written notice thereof.

(e) **Setoff of Receivables**. Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSES pursuant to the Assigned Rights and Obligations, MSES may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSES for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

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

**4. Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

**5. Assignment Period; Assignment Early Termination**.

(a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.

(b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;

ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;

iii. the election of MSES in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSES's rights or obligations under this Agreement (provided that MSES shall not have a right to terminate under this clause (b) to the extent that MSES (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by MSES to PPA Buyer and PPA Seller;

iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if MSES fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSES of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

vi. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSES seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSES commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSES consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSES or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSES or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSES and PPA Buyer have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations hereunder immediately following the termination hereof, which Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the "Assignment Period" under the replacement Assignment Agreement as specified in the notice from MSES or PPA Buyer to the other Parties; and

viii. PPA Buyer may deliver written notice of termination to the other Parties if any change, event or effect occurs, including but not limited a change in applicable laws or regulations, any issues with the PPA Seller or the PPA, a dispute under the PPA or other similar circumstance, that individually or collectively have or are reasonably expected by PPA Buyer to have a material adverse effect upon (A) the PPA Buyer, (B) its rights and obligations under this Agreement, the Prepay Power Supply Contract, or the PPA, or (C) the benefit the PPA Buyer is receiving by assigning the Assigned Rights and Obligations, with such Assignment Early Termination Date to be the date set forth in a written notice delivered by PPA Buyer to the other Parties; provided that (x) PPA Buyer will provide notice to the other Parties as soon as is reasonably possible that PPA Buyer anticipates exercising this termination right, and (y) PPA Buyer shall exercise commercially

reasonable efforts to propose and agree with MSES upon a replacement Assignment Agreement prior to exercising this termination right.

(c) **Reversion of Assigned Rights and Obligations**. The parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date the Assigned Rights and Obligations will revert from MSES to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from MSES to PPA Buyer, provided that (i) MSES shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSES prior to the Assignment Early Termination Date, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date.

**6. Representations and Warranties**.

(a) **Copy of PPA**. PPA Seller and PPA Buyer represent and warrant to MSES that a true, complete, and correct copy of the PPA is attached hereto as Appendix 3.

(b) **No Default**. PPA Seller and PPA Buyer represent and warrant to MSES that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSES that:

i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations**. Each Party represents to each of the other Parties:

i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any

determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

**7. Counterparts**.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

**8. Costs and Expenses**.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

**9. Amendments**.

No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by an electronic transmission) and executed by each of the Parties or confirmed by emails or electronic messages on an electronic messaging system.

**10. Notices**.

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

**11. Miscellaneous**.

(a) **Governing Law**. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) **U.S. Resolution Stay.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("**ISDA U.S. Stay Protocol**"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSES and PPA Seller shall each be deemed to be a

Regulated Entity, and PPA Buyer shall be deemed to be an Adhering Party. In the event of any 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 PPA Seller and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "**chairperson**") within thirty (30) days of the commencement of the arbitration. If either PPA Seller or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the PPA Seller and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(d) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 11(d), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(e) **Judicial Reference.** Without limiting the provisions in Section 11(d), if Section 11(d) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the

exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(e)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 11.

ii. Applicability; Selection of Referees.

(A) Within 10 days of the delivery of an Impasse Notice, each of PPA Seller and PPA Buyer shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed Referees**") shall appoint a third referee (the "**Third Referee**", together with the Party-Appointed Referees, the "**Referees**"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(B) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "**Court**"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and PPA Seller shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of

selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between PPA Seller and PPA Buyer.

(f) **Limitation of Liability.** Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision

thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture

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

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name:_____
Title:_____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name:_____
Title:_____

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name:_____
Title:_____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name:_____
Title:_____

**Appendix 1**
**Assigned Rights and Obligations**

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

**Assigned Delivery Point:** [NP15 EZ GEN HUB)]

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

**Further Information**: [Include additional requirements, if any]

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

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

# LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Agreement**") is entered into as of [____], 2022 by and among Morgan Stanley Capital Group Inc., a Delaware corporation ("**PPA Seller**"), East Bay Community Energy Authority, a joint powers authority and a community choice aggregator organized under the laws of the State of California ("**PPA Buyer**"), California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("**Issuer**"), and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("**MSES**").

## RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain Master Power Purchase and Sale Agreement dated [____], 20[__] and the Specified Source Product Confirmation thereunder dated as of the date hereof (the "**PPA**");

WHEREAS, in connection with a prepaid electricity transaction between Issuer and MSES, and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSES, and MSES wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, MSES will receive the Assigned Product and MSES will deliver the Assigned Product to MSES, which will redeliver the Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, MSES will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Issuer, PPA Seller, PPA Buyer and MSES (the "**Parties**" hereto; each is a "**Party**") agree as follows:

## AGREEMENT

### 1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"**Agreement**" has the meaning specified in the first paragraph above.

"**Assigned Delivery Point**" has the meaning specified in Appendix 1.

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

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

"**Assigned Product**" includes all Specified Source Energy and Carbon Free Energy (as such terms are defined in the PPA) associated with the Assigned Quantity.

"**Assigned Product Price**" means the Energy Price (as defined in the PPA and specified in Appendix 1).

"**Assigned Rights and Obligations**" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Quantity of Assigned Product during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSES hereunder.

"**Assignment Early Termination Date**" has the meaning specified in Section 5(b).

"**Assignment Period**" has the meaning specified in Section 5(a).

"**Assignment Period End Date**" means 11:59:59 p.m. pacific prevailing time on [____], 20[__].

"**Assignment Period Start Date**" means means 00:00 pacific prevailing time on [____], 2022.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice, or payment, or performing a specified action.

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by the Federal Energy Regulatory Commission.

"**Claims**" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"**Delivered Product Payment Obligation**" has the meaning specified in Section 3(a).

"**Electricity**" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"**Government Agency**" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"**Issuer**" has the meaning specified in the first paragraph of this Agreement.

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

"**Month**" means a calendar month.

"**MSES**" has the meaning specified in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

"**PPA Buyer**" has the meaning specified in the first paragraph of this Agreement.

"**PPA Seller**" has the meaning specified in the first paragraph of this Agreement.

"**Prepaid Agreement**" means that certain Prepaid Energy Sales Agreement dated as of the date hereof by and between MSES and Issuer.

"**Prepay Power Supply Contract**" means that certain Prepay Power Supply Contract dated as of the date hereof by and between PPA Buyer and Issuer.

"**Receivables**" has the meaning given to such term in Section 3(e).

"**Retained Rights and Obligations**" has the meaning specified in Section 3.

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

**2. Transfer and Undertakings**.

(a) PPA Buyer hereby assigns, transfers and conveys to MSES all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSES the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and

Obligations to MSES and the exercise and performance by MSES of the Assigned Rights and Obligations during the Assignment Period.

(c) MSES hereby accepts such assignment, transfer and conveyance of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

**3. Limited Assignment**.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**", and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation; Invoicing**.

i. MSES's sole obligation to PPA Seller will be to pay the Assigned Product Price to PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section 5.2 of the Confirmation to the PPA for a quantity determined under this Section 3(a)i (the "**Delivered Product Payment Obligation**"). PPA Buyer shall remain solely responsible for any payment obligations other than the Delivered Product Payment Obligation due under the PPA during the Assignment Period (the "**Retained Payment Obligation**"). For purposes of determining the Delivered Product Payment Obligation and other related payment obligations during the Assignment Period, each Party acknowledges and agrees as follows:

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

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

(C) to the extent that (I) an amount less than the Annual Quantity (as defined in the PPA) has been delivered as of the end of December for any year

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

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSES, and each such invoice shall indicate (A) the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number; provided in addition that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice will be resolved solely between PPA Buyer and PPA Seller. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

(b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSES, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Scheduling**. All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to MSES upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSES at the same point where title is passed to MSES pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSES's agent with regard to scheduling Assigned Energy; provided, however, that PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where

PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs; and (iv) (A) PPA Buyer and PPA Seller will provide copies to MSES of (I) any notice of force majeure delivered under the PPA and (II) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in a default; (B) PPA Seller will provide copies to MSES of annual forecasts and monthly forecasts and generation reports delivered under the PPA; and (C) PPA Buyer and PPA Seller, as applicable, will provide copies to MSES of any other information reasonably requested by MSES relating to Assigned Product.

(d) **Amendments**. PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSES relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSES's rights or obligations under this Agreement until and unless MSES receives written notice thereof.

(e) **Setoff of Receivables**. Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSES pursuant to the Assigned Rights and Obligations, MSES may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSES for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

(f) **Joinder to Intercreditor Agreement**. In connection with the execution of this Agreement and as a condition precedent to the effectiveness hereof, Issuer shall execute a joinder to that certain Intercreditor and Collateral Agency Agreement, dated as of [____], 20[__], by and among River City Bank, as Collateral Agent, the PPA Providers from time to time party thereto and [Silicon Valley Clean Energy Authority] (the "**Intercreditor and Collateral Agency Agreement**"), which will provide Issuer with certain rights as a PPA Provider and Secured Creditor under the Intercreditor and Collateral Agency Agreement, the Security Agreement (as defined in the Intercreditor and Collateral Agency Agreement), and the Control Agreement (as defined in the Intercreditor and Collateral Agency Agreement) (collectively, the "**Security Documents**") for the portion of the payments under the Prepay Power Supply Contract with respect to the Assigned Quantity. The Prepay Power Supply Contract shall have the same meaning as "Power Purchase Agreement" under the Intercreditor and Collateral Agency Agreement. PPA Buyer agrees that it shall make payments with respect to the Assigned Quantity to Issuer under the Prepay Power Supply Contract on the 20$^{th}$ or preceding business day of the month following deliveries consistent with the terms thereof, and such payments will not be made through the Lockbox Account (as defined in the Security Agreement) but will be made from PPA Buyer's available funds not pledged as Collateral (as defined in the Security Agreement); provided that, in the event PPA Buyer fails to make any such payment when due under Prepay Power Supply Contract with respect to the Assigned Quantity, upon written request of Issuer, PPA Buyer shall

cause such payment due to Issuer to be included as Regular Charges (as defined in the Security Agreement) on the first Distribution Date Certificate (as defined in the Security Agreement) to be issued at least ten (10) or more Business Days thereafter. If PPA Buyer fails to do so, Issuer may dispute such Distribution Date Certificate and otherwise pursue its rights to payment thereon pursuant to the terms of the Intercreditor and Collateral Agency Agreement. To the extent Issuer receives any amounts under the Security Documents or Intercreditor and Collateral Agency Agreement in respect of any Receivables purchased by MSES, Issuer shall (i) hold such amounts in trust for the benefit of MSES, (ii) promptly notify MSES thereof and (iii) promptly remit such amounts directly to an account specified by MSES. Issuer's rights as a Secured Creditor and PPA Provider under the Security Documents (x) are limited to amounts owed in connection with the Assigned Quantity, (y) shall terminate automatically following the end of the Assignment Period, subject to payment of any amounts then owing to Issuer pursuant to the Prepay Power Supply Contract in connection with the Assigned Quantity, and (z) upon written request from PPA Buyer, provided that PPA Buyer has no further obligations to Issuer, under the Prepay Power Supply Contract, Issuer shall provide a written termination statement as described under Section 7.12(d) of the Security Agreement consenting to termination of Issuer's rights as a Secured Creditor under the Security Documents, including with respect to the Collateral, and Issuer agrees that such written termination statement shall not be unreasonably withheld, delayed or conditioned.

**4. Forward Contract.**

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

**5. Assignment Period; Assignment Early Termination**.

(a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.

(b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;

ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;

iii. the election of MSES in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution

of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSES's rights or obligations under this Agreement (provided that MSES shall not have a right to terminate under this clause (b) to the extent that MSES (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by MSES to PPA Buyer and PPA Seller;

iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if MSES fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSES of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

vi. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSES seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSES commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSES consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSES or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

vii. either MSES or PPA Buyer may designate an Assignment Early Termination Date with written notice to the other Parties to the extent that MSES and PPA Buyer have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations hereunder immediately following the termination hereof, which Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the "Assignment Period" under the replacement Assignment Agreement as specified in the notice from MSES or PPA Buyer to the other Parties; and

viii. PPA Buyer may deliver written notice of termination to the other Parties if any change, event or effect occurs, including but not limited a change in applicable laws or regulations, any issues with the PPA Seller or the PPA, a dispute under the PPA or other similar circumstance, that individually or collectively have or are reasonably expected by PPA Buyer to have a material adverse effect upon (A) the PPA Buyer, (B) its rights and obligations under this Agreement, the Prepay Power Supply Contract, or the PPA, or (C) the benefit the PPA Buyer is receiving by assigning the Assigned Rights and Obligations, with such Assignment Early Termination Date to be the date set forth in a written notice delivered by PPA Buyer to the other Parties; provided that (x) PPA Buyer will provide notice to the other Parties as soon as is reasonably possible that PPA Buyer anticipates exercising this termination right, and (y) PPA Buyer shall exercise commercially reasonable efforts to propose and agree with MSES upon a replacement Assignment Agreement prior to exercising this termination right.

(c) **Reversion of Assigned Rights and Obligations**. The parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date the Assigned Rights and Obligations will revert from MSES to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from MSES to PPA Buyer, provided that (i) MSES shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSES prior to the Assignment Early Termination Date, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date.

**6. Representations and Warranties**.

(a) **Copy of PPA**. PPA Seller and PPA Buyer represent and warrant to MSES that a true, complete, and correct copy of the PPA is attached hereto as Appendix 3.

(b) **No Default**. PPA Seller and PPA Buyer represent and warrant to MSES that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSES that:

i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations**. Each Party represents to each of the other Parties:

i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

**7. Counterparts**.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

**8. Costs and Expenses**.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

**9. Amendments**.

No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by an electronic transmission) and executed by each of the Parties or confirmed by emails or electronic messages on an electronic messaging system.

**10. Notices**.

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including

overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

**11. Miscellaneous**.

(a) **Governing Law**. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) **U.S. Resolution Stay.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("**ISDA U.S. Stay Protocol**"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSES and PPA Seller shall each be deemed to be a Regulated Entity, and PPA Buyer shall be deemed to be an Adhering Party. In the event of any 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 PPA Seller and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "**chairperson**") within thirty (30) days of the commencement of the arbitration. If either PPA Seller or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the PPA Seller and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection

with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(d) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 11(d), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(e) **Judicial Reference.** Without limiting the provisions in Section 11(d), if Section 11(d) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(e)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 11.

ii. Applicability; Selection of Referees.

(A) Within 10 days of the delivery of an Impasse Notice, each of PPA Seller and PPA Buyer shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed Referees**") shall appoint a third referee (the "**Third Referee**", together with the Party-Appointed Referees, the "**Referees**"). The Party-Appointed

Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(B) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "**Court**"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and PPA Seller shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. Each of PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between PPA Seller and PPA Buyer.

(f) **Limitation of Liability.** Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture

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

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name:_____
Title:_____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name:_____
Title:_____

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name:_____
Title:_____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name:_____
Title:_____

**Appendix 1**
**Assigned Rights and Obligations**

**PPA:** Master Power Purchase and Sale Agreement dated February 12, 2018 and the Specified Source Product Confirmation thereunder dated as of the date hereof, by and between PPA Buyer and PPA Seller

**Assigned Delivery Point: [**NP15 EZ GEN HUB)]

**Assigned Product Price**: [CAISO NP15 Day Ahead Index for Hour Ending 01 through Hour Ending 24]

**Appendix 2**
**Notice Information**

| | |
|---|---|
| **IF TO PPA SELLER:** | As set forth in the PPA |
| **IF TO MSES:** | Morgan Stanley Energy Structuring, L.L.C.<br>1585 Broadway<br>New York, NY 10036-8293<br>Email: [CCCFA_2022a_mses_notices@morganstanley.com] |
| **IF TO ISSUER:** | California Community Choice Financing Authority<br>1125 Tamalpais Avenue<br>San Rafael, CA 94901<br>Email: [SeriesAInvoices@cccfa.org] |
| **IF TO PPA BUYER:** | As set forth in the PPA |

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

Chapman Draft 05.09.22

# PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this "Agreement") is made and entered into as of [_____], 2022, by and between California Community Choice Financing Authority ("CCCFA") and East Bay Community Energy Authority ("EBCE"), with respect to the Prepaid Energy Project (defined below). CCCFA and EBCE 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, EBCE is a "community choice aggregator" under the Public Utilities Code; and

WHEREAS, EBCE and certain other community choice aggregators have created CCCFA as a joint exercise of powers authority under and pursuant to the Act and the Joint Powers Agreement; and

WHEREAS, CCCFA's purpose is to assist its Members (as defined in the Joint Powers Agreement), including EBCE, 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 EBCE are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to EBCE under the terms set forth therein; and

WHEREAS, in order to provide such Energy to EBCE under the Power Supply Contract, CCCFA is entering into the Prepaid Agreement with MSES, under which it will make a prepayment to MSES for the purchase and delivery of such Energy; and

WHEREAS, CCCFA will finance the prepayment under the Prepaid Agreement and related costs by issuing the Bonds pursuant to the Indenture; and

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Defined Terms. Capitalized terms used herein shall have the meanings set forth below:

"Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended.

"Alternate Energy Delivery Point" has the meaning specified in Section 5.1(a) of the Power Supply Contract.

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

"Assigned Delivery Point" has the meaning specified in the Assignment Agreement.

"Assigned Energy" has the meaning specified in the Assignment Agreement.

"Assigned Product" means Assigned Energy and associated renewable energy credits, green energy attributes and any other product included in the Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"Assignment Letter Agreement" has the meaning specified in the Power Supply Contract.

"Base Energy" means Energy to be delivered to an Energy Delivery Point.

"Bonds" means the bonds issued by CCCFA pursuant to the Indenture on or about the date of this Agreement in order to finance the prepayment required to be made to MSES under the Prepaid Agreement and related costs of the Prepaid Energy Project, and any bonds issued to refund such bonds.

"CCCFA" means California Community Choice Financing Authority, a joint exercise of powers authority created under and pursuant to the Act and the Joint Powers Agreement.

"CCCFA Commodity Swap" means the ISDA Master Agreement, Schedule and transaction Confirmation entered into by CCCFA and the swap counterparty named therein, and any replacement swap entered into pursuant to the Prepaid Agreement.

"Contract Quantity" means the quantity of Base Energy or Assigned Energy, as applicable, specified in Exhibits A-1 and A-2 of the Power Supply Contract, as such Exhibits A-1 and A-2 may be updated from time to time in accordance with the terms of the Power Supply Contract.

"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 the delivery point for delivery of EBCE's Contract Quantity as specified in the Power Supply Contract, and shall include, if applicable, any Assigned Delivery Point and any Alternate Delivery Point for EBCE.

"Indenture" means the Trust Indenture, dated as of [_____] 1, 2022, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

"Initial Assignment Agreement" with respect to EBCE, the initial assignment agreement or agreements specified in the Power Supply Contract.

"Joint Powers Agreement" means the Joint Powers Agreement by and among the Members of CCCFA named therein, including EBCE, providing for the creation, purposes and powers of

CCCFA, as the same may be amended or supplemented from time to time in accordance with its terms.

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

"Power Supply Contract" means the Power Supply Contract, dated [_____], 2022, between CCCFA and EBCE relating to the purchase by EBCE of Energy acquired by CCCFA pursuant to the Prepaid Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Agreement" means the Prepaid Energy Sales Agreement, dated [_____], 2022, between CCCFA, as buyer, and MSES, as seller, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Energy Project" means the issuance of the Bonds by CCCFA pursuant to the Indenture, the acquisition of Energy and related undertakings of CCCFA under the Prepaid Agreement and the Indenture, and the sale to EBCE of such Energy and related undertakings of CCCFA under the Power Supply Contract.

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

"Qualifying Use Requirements" has the meaning set forth in Section 1.1 of the Power Supply Contract.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and MSES.

"Schedule", "Scheduled" or "Scheduling" means the actions of a Party and/or its designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"Tax Certificate and Agreement" means the Tax Certificate and Agreement executed and delivered by CCCFA in connection with the issuance of the Bonds relating to certain federal income tax compliance requirements relating to the Prepaid Energy Project.

"Transmission Provider(s)" means any entity or entities transmitting or transporting Energy on behalf of a Party to or from an Energy Delivery Point.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., and its successors as Trustee under the Indenture.

Section 2. Assignment Agreements. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, EBCE has entered into the Initial Assignment Agreement specified in the Power Supply Contract with respect to its entire Contract Quantity;

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

(c) EBCE shall determine, independent of CCCFA, when and if any Assignment Agreement is entered into or terminated and the underlying agreement and portion of its Contract Quantity to which such Assignment Agreement relates.

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Agreement that is attributable to an Assignment Agreement(s) entered into by EBCE shall be attributable to EBCE under the Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to EBCE's Assigned Delivery Point and the transfer of other Assigned Product to EBCE, 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 EBCE pursuant to the related Assignment Agreement(s).

Section 4. Qualified Use; Remarketing of Base Energy. As provided in the Power Supply Contract, any portion of EBCE'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. EBCE shall be responsible for accounting for any portion of EBCE'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. EBCE 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 EBCE 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 EBCE and no event of default has occurred and is continuing with respect to EBCE under the Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by EBCE. Otherwise, any such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions of EBCE.

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

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

(a) Under Section 3.2(b) of the Power Supply Contract, EBCE is required to include in its payment to CCCFA in January of each year, commencing [January 2023], an annual Project Administration Fee in the amount specified therein, determined by CCCFA based on the budgeted

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

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

Section 10. Notices. Notices and other information to be provided by a Party to any other Party under this Agreement shall be provided in accordance with Article XVI of the Power Supply Contract.

Section 11. Governing Law. This Agreement and the obligations of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of California.

Section 12. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

EAST BAY COMMUNITY ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

# CUSTODIAL AGREEMENT

This Custodial Agreement (the "Custodial Agreement"), dated as of [____], 2022 (the "Effective Date"), is entered into by and among Natixis, a bank organized under the laws of the Republic of France (the "Swap Counterparty"), 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) (the "Issuer"), The Bank of New York Mellon Trust Company, N.A., a national banking association, in its capacity as trustee under the Bond Indenture (defined below) (in such capacity, the "Trustee"), and The Bank of New York Mellon Trust Company, N.A., a national banking association, in its capacity as custodian hereunder (in such capacity, the "Custodian").

WHEREAS, Issuer is issuing its Clean Energy Project Revenue Bonds, [Series 2022A] (the "Bonds") pursuant to the Trust Indenture, dated as of [____], 2022 (the "Indenture") between the Issuer and the Trustee; and

WHEREAS, Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("MSES"), as seller, and the Issuer, as purchaser, have entered into a Prepaid Energy Sales Agreement, dated as of [____], 2022 (the "Prepaid Agreement"); and

WHEREAS, in connection with the execution of the Prepaid Agreement, the Issuer and Swap Counterparty are entering into an ISDA Master Agreement, dated as of [____], 2022, together with the Schedule, dated as of [____], 2022, and a Confirmation, dated as of [____], 2022, evidencing a commodity price hedging transaction thereunder (such ISDA Master Agreement, Schedule and Confirmation, the "Front-End Commodity Swap Agreement"); and

WHEREAS, concurrently with the execution of the Front-End Commodity Swap Agreement, the Swap Counterparty and MSES are entering into a corresponding commodity price hedging transaction pursuant to an ISDA Master Agreement, dated as of [____], 2022, together with the Schedule and Credit Support Annex thereto, dated as of [____], 2022, and a Confirmation, dated as of [____], 2022 (such ISDA Master Agreement, Schedule, Credit Support Annex and Confirmation, the "Back-End Commodity Swap Agreement"); and

WHEREAS, the Issuer, the Swap Counterparty and the Custodian propose to enter into this Custodial Agreement in order to administer any payments from Issuer to the Swap Counterparty under the Front-End Commodity Swap Agreement.

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:

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 Indenture.

2. **Appointment of Custodian**. The Issuer and the Swap Counterparty hereby appoint The Bank of New York Mellon Trust Company, N.A. as Custodian under this Custodial

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.

3. **Payments Account.**

(a) With respect to any net payments required to be made by Issuer to the Swap Counterparty under the Front-End Commodity Swap Agreement, there is hereby established with the Custodian, a payments account designated as the "[____]", bearing the Custodian's Account No. [____] (the "Issuer Payments Account") using the wiring instructions below; and any and all net payments payable by Issuer to the Swap Counterparty pursuant to Section 2(a)(i) of the Front-End Commodity Swap Agreement shall be paid by wire transfer to and deposited in the Issuer Payments Account. The Swap Counterparty agrees that any payments made by Issuer into the Issuer Payments Account shall be deemed to have been made directly by Issuer to the Swap Counterparty.

The Bank of New York Mellon
New York, NY
ABA: 021000018
Account No.: [____]
FBO: [____]
Attn: Richard Dillard, 904-645-1923

For the avoidance of doubt, payments required to be made by the Swap Counterparty to the Issuer pursuant to the Front-End Commodity Swap Agreement, payments required to be made by the Swap Counterparty to MSES pursuant to the Back-End Commodity Swap Agreement and payments required to be made by MSES to the Swap Counterparty pursuant to the Back-End Commodity Swap Agreement are not subject to this Custodial Agreement.

(b) Amounts deposited in the Issuer Payments Account shall be held in trust for the benefit of Issuer until applied as set forth in paragraph 3(c) below, and there is hereby granted to Issuer a lien on and security interest in the Issuer Payments Account pending such application. The Custodian shall not be required to comply with any orders, demands or other instructions from the Swap Counterparty with respect to the Issuer 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 Issuer Payments Account, except to the extent that amounts on deposit in the Issuer Payments Account are payable to the Swap Counterparty in accordance with the terms hereof and of the Front-End Commodity Swap Agreement, and the Swap Counterparty agrees that prior to the termination of this Custodial 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 Issuer Payments Account, or to withdraw or otherwise obtain funds or other assets held in or credited to the Issuer Payments Account, whether by order or instruction to the Custodian or otherwise, except to the extent that amounts on deposit in the Issuer Payments Account are payable to the Swap Counterparty in accordance with the terms hereof and of the Front-End Commodity Swap Agreement.

(c) In accordance with this subparagraph (c), the Custodian shall withdraw amounts on deposit in the Issuer Payments Account for the purpose of paying any net amount

payable to Swap Counterparty under Section 2(a)(i) of the Front-End Commodity Swap Agreement on each date on which such amount is due under the Front-End Commodity Swap Agreement, provided that if, prior to any such date, MSES has provided written notice to the Custodian, substantially in the form attached hereto as Exhibit A, by Electronic Means (defined below) to hold such payment (a "Hold Notice"), the Custodian shall withdraw such amounts only upon confirmation by MSES to the Custodian, substantially in the form attached hereto as Exhibit B, by Electronic Means (defined below) that the amount payable by the Swap Counterparty to MSES under the Back-End Commodity Swap Agreement on such date has been paid by the Swap Counterparty in accordance with the terms of the Back-End Commodity Swap Agreement. Subject to paragraph 3(d) below in the case of any withdrawal by the Custodian from the Issuer Payments Account and payment to MSES in accordance with paragraph 3(d), upon confirmation by the Custodian that MSES has received such payment due from the Swap Counterparty under the Back-End Commodity Swap Agreement, the Custodian (either automatically or, if a Hold Notice has been delivered, upon Custodian's receipt of confirmation by MSES in accordance with the preceding sentence) shall withdraw from the Issuer Payments Account the amount due to the Swap Counterparty under the Front-End Commodity Swap Agreement on such date (or such later date upon which payment from Issuer is received under the terms of the Front-End Commodity Swap Agreement and this Custodial Agreement) and pay such amount to the Swap Counterparty by wiring funds to the following account:

For the Account of: Natixis (Natixis Capital Market)
Bank: Deutsche Bank Trust
Company Americas, New York (BKTRUS33)
Fedwire: 021001033
Ultimate Beneficiary: NATXFRPPMAR
Account Number: 04437031

(d) Notwithstanding Section 2(a)(iii) of the Back-End Commodity Swap Agreement or the exercise by or on behalf of MSES of any right of early termination of the Back-End Commodity Swap Agreement, in the event that any amount due to MSES under Section 2(a)(i) of the Back-End Commodity Swap Agreement (including any Unpaid Amounts (as defined in Part 5(b) of the Schedule to the Back-End Commodity Swap Agreement) payable by the Swap Counterparty under the Back-End Commodity Swap Agreement) is not paid when due and remains unpaid as of the close of business on the last day of any grace period for such payment under the terms of the Back-End Commodity Swap Agreement and the Prepaid Agreement, the Custodian shall withdraw from the Issuer Payments Account an amount equal to the amount so due and unpaid under the Back-End Commodity Swap Agreement and pay such amount to MSES.

(e) If at any time the Front-End Commodity Swap Agreement terminates or otherwise ceases to be in effect for any reason, then during the period commencing on the date when the Front-End Commodity Swap Agreement terminates or ceases to be in effect until the earlier of (i) the date on which both the Back-End Commodity Swap Agreement and the Front-End Commodity Swap Agreement have been replaced in accordance with Section 17.5 of the Prepaid Agreement and (ii) the date of termination of the Prepaid Agreement (the "Issuer Payments Period"), Issuer shall deposit into the Issuer Payments any and all net payments that would have been payable by the Issuer to Swap Counterparty during the Issuer Payments Period pursuant to Section 2(a)(i) of the Front-End Commodity Swap if the Front-End Commodity Swap had not

terminated. Deposits made by Issuer to the Issuer Payments Account in accordance with this Section 3(e) shall be withdrawn by the Custodian and paid to MSES.

4. **Custodian**. The Custodian shall have (a) no liability under any agreement other than this Custodial Agreement and (b) no duty to inquire as to the provisions of any agreement other than this Custodial Agreement, the Back-End Commodity Swap Agreement and the Front-End Commodity Swap Agreement. 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 and reasonably 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 or compel any payments which may be due to it. 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 cause of any loss. 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. 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 Custodial 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 Custodial Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, incidental, consequential or punitive damages, losses or penalties of any kind whatsoever (including but not limited to lost profits), regardless of the form of action. The Custodian may engage and act through agents and attorneys and shall not be liable for the misconduct or negligence of any such agent or attorney appointed with due care. Nothing herein shall obligate or be construed to obligate the Custodian to advance its own funds, or to expend or risk its own funds. The Custodian shall not be liable for any action taken by it in good faith in accordance with instruction received in accordance with this Custodial Agreement, or for the application of funds by or other actions or omissions of other persons. Any permissive right or power granted to the Custodian hereunder shall not be construed as a duty to act. The Custodian shall not be obliged to invest or pay interest on funds held hereunder, unless and except to the extent otherwise expressly agreed in writing. The Custodian shall not be responsible for the perfection of any security interest granted hereunder.

5. **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; provided, however, that in the event of such resignation, The Bank of New York Mellon Trust Company,

N.A. ("BNYM") shall at the same time resign from its duties and obligations as custodian under that certain Custodial Agreement dated as of the date hereof by and among MSES, the Swap Counterparty, the Trustee and BNYM as custodian thereunder (in such capacity, the "Back-End Custodian") pertaining to the administration of payments under the Back-End Commodity Swap Agreement (the "Back-End Swap Custodial Agreement"). Such resignation under this Custodial Agreement shall take effect upon the day specified in such notice unless a successor shall not have been appointed by Issuer and the Swap Counterparty (with the consent of MSES, as provided below) on such date, in which event such resignation shall not take effect until a successor is appointed. Issuer and the Swap Counterparty 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 a 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 Custodial Agreement; provided, further, however, that such appointment of a successor to the Custodian hereunder shall be subject to the consent of MSES, and such appointed successor hereunder shall be the same custodian appointed as successor to the Back-End Custodian under the Back-End Swap Custodial Agreement. If Issuer and the Swap Counterparty fail or are unable to appoint a successor within sixty (60) days of such notice of resignation, with the consent of MSES, the Custodian shall be entitled to petition a court of competent jurisdiction to appoint a successor. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Custodian. 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 Custodial Agreement without further act.

6. **Fees**. Issuer agrees to (a) pay the Custodian reasonable compensation for the services to be rendered hereunder, which compensation shall be $[____] for each year that this Custodial Agreement is in effect, and (b) pay or reimburse the Custodian upon request for all expenses, disbursements and advances, including reasonable attorneys' fees and expenses, incurred or made by it in connection with the preparation, execution, performance, delivery, modification and termination of this Custodial Agreement. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Custodial Agreement.

7. **Reimbursement**. Issuer agrees 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) the Custodian's execution and performance of this Custodial Agreement, except to the extent such loss, liability or expense is finally adjudicated to have been primarily caused by the gross negligence or willful misconduct of the Custodian or its director, officer, agent or employee seeking reimbursement, or (b) its following any instructions or other directions from Issuer, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of the Custodial Agreement.

8. **Taxpayer Identification Numbers; Tax Matters**. Issuer and the Swap Counterparty each represent that its correct taxpayer identification number 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 Issuer Payments Account will be prepared and filed by Issuer or the Swap Counterparty, as appropriate, 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 Issuer Payments Account. In addition, any tax or other payments required to be made pursuant to such tax return or filing shall be paid by Issuer or the Swap Counterparty, as appropriate. The Custodian shall have no responsibility for making such payment unless directed to do so in writing by the appropriate authorized party and fully indemnified to the Custodian's satisfaction.

9. **Notices**. All communications hereunder shall be in writing and shall be deemed to be duly given and received (a) upon delivery if delivered personally, upon confirmed transmittal if by facsimile and as set forth in the final paragraph of this Section 9 if by e-mail transmission; (b) on the next Business Day if sent by overnight courier; or (c) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address for Issuer or the Swap Counterparty, as applicable, set forth in the Front-End Commodity Swap Agreement. Notices to the Custodian shall be provided to the following address:

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

Any party may provide a new or different address for such notices if furnished to the other parties in writing by registered mail, return receipt requested. Notwithstanding the above provisions of this Section 9, in the case of communications delivered to the Custodian pursuant to clause (b) or clause (c) of this Section 9, such communications shall be deemed to have been given on the date received by the Custodian. In the event that the Custodian, in its sole discretion, shall determine that an emergency exists, the Custodian may use such other means of communication as the Custodian deems appropriate.

The Custodian shall have the right to accept and act upon directions given pursuant to this Custodial Agreement, or any other document reasonably relating to the Front-End Commodity Swap Agreement, the Back-End Commodity Swap Agreement or other matters described herein, delivered using Electronic Means (defined below); provided, however, that each party giving directions to the Custodian hereunder shall provide to the Custodian an incumbency certificate, substantially in the form attached hereto as Exhibit B-2, listing persons with the authority to provide such directions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If a party elects to give the Custodian directions using Electronic Means and the Custodian in its discretion elects to act upon such directions, the Custodian's understanding of such directions shall be deemed controlling. The parties understand and agree that the Custodian cannot determine the identity of the actual sender of such directions and that

the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided by a party to the Custodian have been sent by such Authorized Officer. Each party shall be responsible for ensuring that only Authorized Officers transmit such directions to the Custodian and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys issued by the Custodian as confidential and with extreme care. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such directions notwithstanding that such directions conflict or are inconsistent with a subsequent written direction. Each party agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Custodian, including without limitation the risk of the Custodian 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 Custodian 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 Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

As used herein, "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

Notwithstanding anything to the contrary herein, a party may at any time notify the other parties in accordance with this Custodial Agreement that any subsequent notice or other communication hereunder must be provided by e-mail transmission for a specified period of time or until further notice, and any notices or other communications delivered by means other than e-mail transmission during such time shall be ineffective. Such notice will not be effective unless it includes a valid e-mail address for the party requesting that notices and other communications be delivered by e-mail transmission. Such party will take reasonable steps to ensure the continued availability of such e-mail address for the receipt of notices and other communications hereunder and will promptly notify the other parties in accordance with this Custodial Agreement of a change or modification as to the e-mail address or its availability to receive notices and other communications. Notices or other communications sent by e-mail transmission will be deemed to have been delivered when sent, if sent during the recipient's business hours, or upon the commencement of the recipient's business hours, if sent outside of recipient's business hours; provided that (i) any such notice by e-mail shall not be effective if a "bounce-back", system error message or other notification of non-delivery is received by the sender and (ii) in such case the noticing party may provide notices and communications by any other means permitted under this Custodial Agreement or may attempt providing notice again by e-mail (and any such follow-up e-mail notice shall be effective under the terms set forth above so long as a non-delivery notice is not received with respect thereto).

10. **Miscellaneous**.

(a) The provisions of this Custodial 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 Custodial Agreement nor any right, title or interest hereunder may be assigned in whole or in part by any party, without the prior written consent of the other parties, except as provided in Section 5; provided that, notwithstanding the foregoing, the parties acknowledge and agree that Issuer shall assign all of its right, title and interest in, to and under this Custodial Agreement in connection with any assignment by Issuer of its right, title and interest in, to and under the Front-End Commodity Swap Agreement to the assignee thereof, which assignment shall constitute a novation.

(c) This Custodial 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 the Issuer to enter into and perform its obligations under this Custodial Agreement shall be determined in accordance with the laws of the State of California.

(d) Each party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of any court of the State of New York located in the Borough of Manhattan, or of the United States District Court located in the Borough of Manhattan. 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 Custodial Agreement.

(e) No party to this Custodial 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 Custodial Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

(f) This Custodial 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 Custodial Agreement may be transmitted by facsimile or by digital pdf transmission under the terms set forth in this Section 10(f). The parties agree that the electronic signature of a party to this Custodial Agreement, 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 Custodial Agreement. The parties agree that any electronically signed document (including this Custodial Agreement) 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

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 Custodial 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.

12. **Term; Winding Up**. This Custodial Agreement will expire at the later of (i) the receipt of written notice from either Issuer or the Swap Counterparty to the other parties that the Front-End Commodity Swap Agreement has terminated in accordance with its terms and (ii) the expiration of the Issuer Payments Period, if any. Any remaining balance in the Issuer Payments Account following written confirmation from MSES that all required payments by the Swap Counterparty to MSES under the Back-End Commodity Swap Agreement have been received by MSES shall be paid to the Swap Counterparty.

13. **Indemnification**. Issuer and the Swap Counterparty, jointly and severally, agree to protect, indemnify, defend and hold harmless, the Custodian, and its affiliates, and each person who controls the Custodian from and against all claims, damages, losses, liabilities, actions, suits, costs, judgments and expenses (including, without limitation, court costs and reasonable attorneys' fees) arising from its acting as Custodian hereunder, except for any such claim, damage, loss, liability, action, suit, cost, judgment or expense 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 Custodial 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 Custodial Agreement. In addition, notwithstanding anything herein to the contrary, the Custodian shall have all of the rights (including the indemnification rights), benefits, privileges and immunities granted to the Trustee under the Indenture, all of which are incorporated, mutatis mutandis, into this Custodial Agreement.

14. **Patriot Act.** Issuer and the Swap Counterparty 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 Issuer and the Swap Counterparty. Accordingly, prior to opening the Issuer Payments Account described in Section 3 of this Custodial Agreement, the Custodian will ask Issuer and the Swap Counterparty 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 the identity of Issuer and the Swap Counterparty, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Issuer and the Swap Counterparty agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies the identity of Issuer and the Swap Counterparty each in accordance with its CIP.

[Signatures appear on the next page]

IN WITNESS WHEREOF, the parties hereto have executed this Custodial Agreement as of the date first set forth above.

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**

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

**NATIXIS**

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

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

By:_____
Name:_____
Title:_____

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

By:_____
Name:_____
Title:_____

**EXHIBIT A**

[LETTERHEAD OF MORGAN STANLEY ENERGY STRUCTURING, L.L.C.]

[Date]

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

Re: Custodial Agreement by and among California Community Choice Financing Authority ("Issuer"), Natixis ("Swap Counterparty"), The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian") dated as of [____], 2022 (the "Custodial Agreement")

**HOLD NOTICE**

Pursuant to and in accordance Section 3(c) of the Custodial Agreement, the undersigned Authorized Officer of Morgan Stanley Energy Structuring, L.L.C. does hereby issue this Hold Notice to the Custodian, directing the Custodian to withdraw amounts on deposit in the Issuer Payments Account for the purpose of paying any net amount payable to Swap Counterparty under Section 2(a)(i) of the Front-End Commodity Swap Agreement on the immediately subsequent Business Day (as defined in the Indenture) to the date hereof on which such amount is due under the Front-End Commodity Swap Agreement only upon confirmation by MSES to the Custodian in accordance with Section 3(c) of the Custodial Agreement that the amount payable by the Swap Counterparty to MSES under the Back-End Commodity Swap Agreement on such date has been paid by the Swap Counterparty in accordance with the terms of the Back-End Commodity Swap Agreement.

Capitalized terms used herein and not otherwise defined shall have the meaning assigned in the Custodial Agreement.

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name:
Title:

cc: California Community Choice Financing Authority

**EXHIBIT B-1**

[LETTERHEAD OF MORGAN STANLEY ENERGY STRUCTURING, L.L.C.]

[Date]

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

Re: Custodial Agreement by and among California Community Choice Financing Authority ("Issuer"), Natixis ("Swap Counterparty"), The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian") dated as of [____], 2022 (the "Custodial Agreement")

**CONFIRMATION**

Pursuant to and in accordance Section 3(c) of the Custodial Agreement, the undersigned Authorized MSES Representative does hereby confirm that the full amount of the payment due from Swap Counterparty to MSES under the Back-End Commodity Swap Agreement has been received this day.

Capitalized terms used herein and not otherwise defined shall have the meaning assigned in the Custodial Agreement.

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name:
Title:

cc: [_____]

**EXHIBIT B-2**

**FORM OF CERTIFICATE OF**
**[_____]**

The undersigned, a duly authorized officer of [_____], in connection with the Custodial Agreement by and among California Community Choice Financing Authority ("Issuer"), Natixis ("Swap Counterparty"), The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian") dated as of [____], 2022 (the "Custodial Agreement"), HEREBY CERTIFIES that the persons whose names, titles and signatures appear below are duly qualified and acting representatives of [_____] ("Authorized Representatives") on the date hereof. Each holds the office set forth beside his/her name, and the signature appearing opposite his/her name is the genuine signature of such Authorized Representative. Only those individuals, or such additional individuals as the undersigned may designate prior to written notice to the Custodian in the future, shall execute and deliver any written instructions, confirmations or certificates on behalf of [_____] in connection with the Custodial Agreement. Custodian shall not be obligated to accept any written instructions, confirmations or certificates executed by an individual other than those listed below or so designated in the future.

| NAME | TITLE | PHONE NO. | SIGNATURE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Capitalized terms used herein and not otherwise defined shall have the meaning assigned in the Custodial Agreement.

[_____] acknowledges that Custodian will accept notices by Electronic Means only if [_____] acknowledges and assumes all risks relating to the use of such notices. [_____] hereby acknowledges and assumes all risks relating to the sending of notices by Electronic Means.

IN WITNESS WHEREOF, the undersigned has caused this Certificate to be executed for and on behalf of [_____] this ___day of _____.

[NAME OF PARTY]

By: _____
Name:
Title:

# TRUST INDENTURE

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

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

$_____
Clean Energy Project Revenue Bonds
Series 2022A-1 (Term Rate)
and
Series 2022A-2 ([SIFMA] Index Rate)

Dated as of _____ 1, 2022

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## TRUST INDENTURE

THIS TRUST INDENTURE, dated as of _____ 1, 2022 (this *"Indenture"*), is by and between California Community Choice Financing Authority, a joint powers authority and public entity of the State of California (the *"Issuer"*) and The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States and authorized to accept and execute trusts of the character herein, as trustee (the *"Trustee"*).

## 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 Clean Energy Project through the issuance of Bonds pursuant to this Indenture; and

WHEREAS, the execution and delivery of this Indenture has been in all respects duly and validly authorized and approved by resolution of the Board of the Issuer; and

WHEREAS, the Trustee is willing to accept the trusts provided for in this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, and the Issuer and the Trustee agree as follows for the benefit of the other, for the benefit of the Holders of the Bonds issued pursuant hereto and the other parties secured hereby:

## GRANTING CLAUSES

FOR AND IN CONSIDERATION OF the premises, the mutual covenants of the Issuer and the Trustee herein, the purchase of the Bonds by the Holders thereof and the obligations of the Interest Rate Swap Counterparty under the Interest Rate Swap, and in order to secure:

(i) the payment of the principal of and premium, if any, and interest on the Bonds and the payment of the Interest Rate Swap Payments, in each case according to the tenor and effect of the Bonds and the Interest Rate Swap, and

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

the Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of the Issuer in and to the Trust Estate, subject to conveyance, assignment and pledge of the Commodity Swap Payment Fund in favor of the Commodity Swap Counterparty as set forth below, and further subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, and all other rights hereinafter granted for the further securing of the Bonds;

FOR AND IN CONSIDERATION OF the obligations of the Commodity Swap Counterparty under the Commodity Swap and the mutual covenants of the Issuer and the Commodity Swap Counterparty thereunder, and in order to secure the payment of the Commodity Swap Payments, the Issuer does hereby convey, assign and pledge unto the Trustee and its successors in trust, all right, title and interest of the Issuer in the Commodity Swap Payment Fund and the amounts on deposit therein, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, which conveyance, assignment and pledge shall have priority over the foregoing conveyance, assignment and pledge of the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Bonds and the Interest Rate Swap Payments;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby and hereafter conveyed and assigned, or agreed or intended so to be, to the Trustee and its respective successors in said trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of (i) all Holders of the Bonds without privilege, priority or distinction as to the lien or otherwise of any Bond over any other Bond or the payment of interest with respect to any Bond over the payment of interest with respect to any other Bond, except as otherwise provided herein, and (ii) the Interest Rate Swap Counterparty; and

*PROVIDED, HOWEVER*, that if the Issuer, its successors or assigns shall well and truly pay, or cause to be paid, the principal or Redemption Price, if any, on the Bonds and the interest due or to become due thereon, the Commodity Swap Payments and the Interest Rate Swap Payments, at the times and in the manner provided in the Bonds, the Commodity Swap and the Interest Rate Swap, respectively, according to the true intent and meaning thereof, and shall cause the payments to be made into the Funds as required hereunder, or shall provide, as permitted hereby, for the payment thereof as provided in Section 12.01, and shall well and truly keep and perform and observe all the covenants and conditions of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments or provisions for such payments by the Issuer, the Bonds, the Commodity Swap and the Interest Rate Swap shall

cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of the Issuer to the Holders of the Bonds shall thereupon cease, terminate and be discharged and satisfied; otherwise this Indenture shall remain in full force and effect.

The terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all Persons who from time to time shall be or become the Holders thereof, and the trusts and conditions upon which the Revenues, moneys, securities and funds held or set aside under this Indenture, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture, are to be held and disposed of, which said trusts and conditions the Trustee hereby accepts, and the respective parties hereto covenant and agree, are as follows:

## ARTICLE I

## DEFINITIONS AND GOVERNING LAW

*Section 1.01. Definitions*. The following terms shall, for all purposes of this Indenture, have the following meanings:

*"Account"* or *"Accounts"* means, as the case may be, each or all of the Accounts established in Sections 4.15 and 5.02.

*"Accountant's Certificate"* means a certificate signed by an independent certified public accountant or a firm of independent certified public accountants, selected by the Issuer, who may be the accountant or firm of accountants who regularly audit the books of the Issuer and must be identified upon selection in writing to the Trustee.

*"Act"* means the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time.

"*Administrative Fee Fund*" means the Administrative Fee Fund established in Section 5.02.

*"Alternate Liquidity Facility"* means a Liquidity Facility for a Series of Bonds delivered to the Trustee in substitution for a Liquidity Facility then in effect with respect to such Bonds.

*"Amortized Value"* means, with respect to any Bond to be redeemed when a Term Rate Period is in effect with respect to such Bond, the principal amount of such Bond multiplied by the price of such Bond expressed as a percentage, calculated by a major market maker in municipal securities, as the quotation agent, selected by the Issuer, based on the industry standard method of calculating bond prices (as such industry standard prevailed on the date such Bond began to bear interest at its current Term Rate), with a delivery date equal to the date of redemption of such Bond, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date of such Bond and a yield equal to such Bond's original reoffering yield on the date such Bond began to bear interest at its current Term Rate, which, in the case of the

initial Term Rate Period for the Series 2022A-1 Bonds and certain dates, produces the amounts for all of the Series 2022A-1 Bonds set forth in Schedule IV; *provided* that in the case of a redemption of the Series 2022A-1 Bonds pursuant to Section 4.03(b), the Amortized Value of the Series 2022A-1 Bonds shall be the percentage of the principal amount thereof for the applicable redemption date set forth in Section 4.03(b).

*"Applicable Factor"* means (a) with respect to the initial issuance of a Series of Bonds bearing interest at a SOFR Index Rate, the percentage or factor of the SOFR Index determined by the Underwriter and specified in the Index Rate Determination Certificate for such Series of Bonds, or (b) with respect to a Series of Bonds for which the Interest Rate Period is being converted to a SOFR Index Rate Period (including a change in such Interest Rate Period from one SOFR Index Rate Period to another SOFR Index Rate Period), the percentage or factor of the SOFR Index determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate or Index Rate Continuation Notice, provided in each case that the Issuer delivers to the Trustee a Favorable Opinion of Bond Counsel addressing the selection of such percentage or factor. The Applicable Factor shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a) and included in the applicable Index Rate Determination Certificate, and once determined shall remain constant for the duration of the applicable SOFR Index Rate Period.

*"Applicable Spread"* means, with respect to a Series of Bonds for which the Initial Interest Rate Period is an Index Rate Period, or for any Series of Bonds for which the Interest Rate Period is converted to an Index Rate Period, the margin or spread, which may be positive or negative, determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with Section 2.09(a), on or prior to the Issue Date or Conversion Date for such Bonds, as applicable, and specified in the applicable Supplemental Indenture or Index Rate Determination Certificate, as applicable, which shall be added to the applicable Index (or the product of the Applicable Factor and the applicable Index, as the case may be) to determine the Index Rate. Once so determined, Applicable Spread shall remain constant for the duration of the applicable Index Rate Period.

*"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 Refinity at least one Business Day and not more than 15 Business Days prior to the date that notice of redemption is required to be given pursuant to Section 4.04. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations" yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight line basis. This rate is made available daily by Refinity and is available to its subscribers through the internet address: www.tm3.com. In calculating the Applicable Tax Exempt Municipal Bond Rate, should Refinity no longer publish the "Comparable AAA General Obligations" yield curve rate, then the Applicable Tax Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Analytics and is available to its subscribers through its internet address: www.mma research.com. In the further event Municipal Market Analytics no longer publishes the Consensus Scale, the Applicable Tax Exempt Municipal Bond Rate shall be determined by a

major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date or Mandatory Purchase Date, as applicable, of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax Exempt Municipal Bond Rate shall be final and binding on all parties in the absence of manifest error and may be conclusively relied upon in good faith by the Trustee.

*"Assignment Payment"* means any payment received from the Energy Supplier in connection with an assignment of the Energy Purchase Agreement to a replacement energy supplier.

*"Assignment Payment Fund"* means the Assignment Payment Fund established in Section 5.02.

*"Attesting Party"* means an individual authorized by a resolution of the Board to attest the signatures of Authorized Officers.

*"Authorized Denominations"* means with respect to any (a) Term Rate Period or Index Rate Period, $5,000 and any integral multiple thereof, and (b) Commercial Paper Interest Rate Period, Daily Interest Rate Period or Weekly Interest Rate Period, $100,000 and any integral multiple of $1,000 in excess of $100,000.

*"Authorized Newspaper"* means *The Wall Street Journal* or *The Bond Buyer* or any other newspaper or journal printed in the English language and customarily published on each Business Day devoted to financial news and selected by the Issuer, with prior written notice to and approval of the Trustee, whose decision shall be final.

*"Authorized Officer"* means (a) the Treasurer/Controller of the Issuer, and (b) any other person or persons designated by the Board by resolution to act on behalf of the Issuer under this Indenture. The designation of such person or persons shall be evidenced by a Written Certificate of the Issuer delivered to a Responsible Officer of the Trustee containing the specimen signature of such person or persons and signed on behalf of the Issuer by its Treasurer/Controller. Such designation as an Authorized Officer shall remain in effect until a Responsible Officer of the Trustee receives actual written notice from the Issuer to the contrary, accompanied by a new certificate.

*"Beneficial Owner"* means, with respect to Bonds registered in the Book Entry System, any Person who acquires a beneficial ownership interest in a Bond held by the Securities Depository, and the term "*Beneficial Ownership*" shall be interpreted accordingly.

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

*"Board"* means the Board of Directors of the Issuer, or if said Board is abolished, the board, body, commission or agency succeeding to the principal functions thereof or to whom the

power and duties granted or imposed by this Indenture are given by law, and which shall be identified in a Written Notice of the Issuer delivered to the Trustee.

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

*"Bond Counsel"* means 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 the Issuer.

*"Bond Payment Date"* means each date on which (a) interest on the Bonds is due and payable, (b) an Interest Rate Swap Payment is due, or (c) principal of the Bonds is payable at maturity or pursuant to Sinking Fund Installments.

*"Bond Purchase Fund"* means the fund by that name established pursuant to Section 4.15(a), including the Remarketing Proceeds Account and the Issuer Purchase Account therein.

*"Bond Registrar"* means the Trustee and any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by the Issuer to perform the duties of Bond Registrar under this Indenture.

*"Bondholder"* or *"Holder of Bonds"* or *"Holder"* or *"Owner"* means any Person who shall be the registered owner of any Bond or Bonds.

*"Book Entry System"* means the system maintained by the Securities Depository and described in Section 3.09.

*"Business Day"* means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the cities in which are located the designated corporate trust offices of the Trustee, the Custodian or a Calculation Agent or the operational office of the 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, and (e) for purposes of determining the SIFMA Index Rate and the SOFR Index Rate, any day that SIFMA recommends that the fixed income departments of its members be closed for purposes of trading in United States government securities.

*"Calculation Agent"* means, with respect to any Series of Bonds bearing interest at an Index Rate, the Calculation Agent with respect to such Bonds appointed by the Issuer, with written notice to the Trustee, pursuant to the applicable Calculation Agent Agreement and the Indenture. The initial Calculation Agent for the Series 2022A Bonds shall be The Bank of New York Mellon Trust Company, N.A.

*"Calculation Agent Agreement"* means, with respect to any Series of Bonds bearing interest at an Index Rate, such agreement as is entered into by the applicable Calculation Agent and the Issuer with respect to such Series of Bonds providing for the determination of the applicable Index Rate in accordance with Section 2.09 or Section 2.14, as originally executed or as it may from time to time be supplemented or modified pursuant to the terms thereof and this Indenture, as applicable.

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

*"Clean Energy Project"* means the Issuer's purchase of Energy pursuant to the Energy Purchase Agreement and related contractual arrangements and agreements, and the purchase of any Energy to replace Energy not delivered as required pursuant to the Energy Purchase Agreement.

*"Commercial Paper Interest Rate Period"* means, with respect to a Series of Bonds, each period comprised of CP Interest Terms for the Bonds of such Series, during which CP Interest Term Rates are in effect for the Bonds of such Series.

*"Commodity Swap"* means the ISDA Master Agreement, Schedule and Confirmation between the Issuer and the Commodity Swap Counterparty, or any replacement agreement permitted by Section 2.12(b), pursuant to which the Issuer will pay to the Commodity Swap Counterparty an index based floating price and the Commodity Swap Counterparty will pay to the Issuer a fixed price in relation to the quantities of Energy to be delivered under the Energy Purchase Agreement.

*"Commodity Swap Counterparty"* means Natixis, S. A. and its successors and assigns and the counterparty to any replacement Commodity Swap that meets the requirements of Section 2.12(b).

*"Commodity Swap Mandatory Termination Event"* has the meaning set forth in Section 2.12(c)(iii).

*"Commodity Swap Payment Fund"* means the Commodity Swap Payment Fund established in Section 5.02.

*"Commodity Swap Payments"* means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to the Commodity Swap Counterparty by the Issuer (including any such amount paid to the Custodian pursuant to Section 3 of the Issuer Custodial Agreement).

*"Commodity Swap Receipts"* means, as of each scheduled payment date specified in a Commodity Swap, the amount, if any, payable to the Issuer by the Commodity Swap Counterparty.

*"Contract Price"* has the meaning assigned to such term in the Power Supply Contracts.

*"Conversion"* means (a) a conversion of a Series of Bonds from one Interest Rate Period to another Interest Rate Period, (b) with respect to a Series of Bonds bearing interest at an Index Rate, the establishment of a new Index, a new Index Rate and/or a new Index Rate Period and (c) with respect to a Series of Bonds bearing interest in a Term Rate Period, the establishment of a new Term Rate and/or a new Term Rate Period. A Conversion may occur only on a Mandatory Purchase Date.

*"Conversion Date"* means the effective date of a Conversion of a Series of Bonds and shall occur only on a Mandatory Purchase Date.

*"Cost of Acquisition"* means all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing Clean Energy Project, including:

(a) the amount of the prepayment required to be made by the Issuer under the Energy Purchase Agreement;

(b) the amount for deposit into the Capitalized Interest Subaccount of the Debt Service Account for capitalized interest on the Bonds, with such interest being calculated in accordance with the definition of "Debt Service;"

(c) the costs and expenses incurred in the issuance and sale of the Bonds, including, without limitation, legal, financial advisory, accounting, engineering, consulting, municipal advisory, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds and preparation of this Indenture;

(e) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of the Clean Energy Project;

(f) the allowance for working capital requirements of the Issuer with respect to the Clean Energy Project in such amounts as shall be deemed reasonably necessary by the Issuer; and

(g) with respect to any Series of Refunding Bonds, the amounts necessary to purchase, redeem and discharge Bonds being refunded, including the payment of the Purchase Price or the Redemption Price of such Bonds, any necessary deposits to the Debt Service Account, and all other costs and expenses incurred in connection with such Series of Refunding Bonds, including the costs and expenses described in (e) and (f) above.

*"CP Interest Term"* means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, each period established in accordance with Section 2.08 during which a CP Interest Term Rate is in effect for the Bonds of such Series.

*"CP Interest Term Rate"* means, with respect to any Bond of a Series of Bonds in the Commercial Paper Interest Rate Period, an interest rate established periodically for each CP Interest Term in accordance with Section 2.08.

*"CP Mandatory Purchase Date"* means (i) each Mandatory Purchase Date and (ii) the day next succeeding the last day of each CP Interest Term.

*"CPI"* means, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (*"CPI"*), published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor (*"BLS"*) and reported on Bloomberg CPURNSA or any successor service (*"Bloomberg CPURNSA"*). If such index is not then reported by such source but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such Month using a source it deems to be accurate and appropriate.

*"CPI Index Rate Formula"* means (i) the total of CPI for the applicable Reference Month less CPI for the twelfth month prior to the applicable Reference Month, divided by (ii) CPI for the twelfth month prior to the applicable Reference Month, which formula would be expressed mathematically as ((CPIt — CPIt-12) / CPIt-12), where:

CPIt = CPI for the applicable Reference Month; and

CPIt-12 = CPI for the twelfth month prior to the applicable Reference Month.

All values used in the CPI Index Rate Formula will be truncated to six decimal places and rounded to the nearest fifth decimal place (one hundred thousandth of a percentage point), rounding upwards if the sixth decimal place is five or greater (*e.g.,* 9.876555% (or .09876555) would be rounded up to 9.87656% (or .0987656) and 9.876554% (or .09876554) would be rounded down to 9.87655% (or .0987655)). All percentages resulting from any calculation of the interest rate will be truncated to four decimal places and rounded to the nearest third decimal place (one thousandth of a percentage point), rounding upwards if the fourth decimal place is five or greater (*e.g.,* 9.8765% (or .098765) would be rounded up to 9.877% (or .09877) and 9.8764% (or .098764) would be rounded down to 9.876% (or .09876)). All dollar amounts used in or resulting from such calculation on Bonds bearing interest at the CPI Index Rate will be rounded to the nearest cent (with one-half cent being rounded upward).

If the sum of (i) the CPI Index Rate Formula and (ii) the Applicable Spread on any CPI Index Rate Reset Date yields a number equal to or less than zero, the interest rate on such CPI Index Rate Bonds shall be 0.00% (zero percent) for the applicable month.

*"CPI Index Rate"* means the interest rate per annum determined by the Calculation Agent equal to the sum of (a) the result of the CPI Interest Rate Formula, plus (b) the Applicable Spread, as set forth in Section 2.14.

*"CPI Index Rate Period"* means, with respect to a Series of Bonds, each period during which a CPI Index Rate is in effect for such Bonds.

*"CPI Index Rate Reset Date"* means, the first Business Day of each calendar month.

*"CPI Interest Period"* means the period from and including a CPI Index Rate Reset Date, to but excluding the next following CPI Index Rate Reset Date.

*"Custodial Agreements"* means, collectively, the Energy Supplier Custodial Agreement and the Issuer Custodial Agreement.

*"Custodian"* means The Bank of New York Mellon Trust Company, N.A., as Custodian under the Custodial Agreements and its successors and assigns.

*"Daily Interest Rate"* means, with respect to a Series of Bonds, the final daily interest rate for such Bonds determined by the Remarketing Agent by 11:00 a.m. New York City time pursuant to Section 2.05.

*"Daily Interest Rate Period"* means, with respect to a Series of Bonds, each period during which a Daily Interest Rate is in effect for such Bonds.

*"Debt Service"* means with respect to any Outstanding Bonds, for any particular period of time, an amount equal to the sum of:

(a) all interest payable during such period on such Bonds, but excluding any interest that is to be paid from Bond proceeds on deposit in the Debt Service Account, plus

(b) the Principal Installments payable during such period on such Bonds, calculated on the assumption that, on the day of calculation, such Bonds cease to be Outstanding by reason of, but only by reason of, payment either upon maturity or application of any Sinking Fund Installments required by this Indenture;

*provided* that (i) the interest on any Bonds with a related Interest Rate Swap shall be calculated on the basis of the fixed interest rate payable by the Issuer under the Interest Rate Swap, and (ii) principal and interest due on the first day of a Fiscal Year shall be deemed to have been payable and paid on the last day of the immediately preceding Fiscal Year.

*"Debt Service Account"* means the Debt Service Account in the Debt Service Fund established in Section 5.02.

*"Debt Service Fund"* means the Debt Service Fund established in Section 5.02.

*"Debt Service Fund Agreement"* means any debt service fund agreement, that is a Qualified Investment, among the Trustee, the Issuer and a provider, or between the Issuer and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund. The initial Debt Service Fund Agreement shall be the Debt Service Account Investment Agreement between the Issuer and Morgan Stanley Capital Group, Inc., dated _____, 20__.

*"Debt Service Fund Agreement Guaranty"* means any unconditional guaranty, in favor of the Issuer and the Trustee, guarantying the obligations of the provider under any Debt Service Fund Agreement.

*"Defaulted Interest"* has the meaning given to such term in Section 3.08.

*"Defeasance Securities"* means (a) Government Obligations and (b) to the extent that such deposits or certificates of deposit are Qualified Investments, deposits in interest-bearing time deposits or certificates of deposit which shall not be subject to redemption or repayment prior to their maturity or due date other than at the option of the depositor or holder thereof or as to which an irrevocable notice of redemption or repayment, or irrevocable instructions have been given to call for redemption or repayment, of such time deposits or certificates of deposit on a specified redemption or repayment date has been given and such time deposits or certificates of deposit are not otherwise subject to redemption or repayment prior to such specified date other than at the option of the depositor or holder thereof, and which are fully secured by Government Obligations to the extent not insured by the Federal Deposit Insurance Corporation.

*"Depository"* means any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by the Issuer as a depository of moneys and securities held under the provisions of this Indenture, and may include the Trustee.

*"Dissemination Agent"* means that certain dissemination agent appointed by the Issuer, pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent appointed by the Issuer in accordance with the Continuing Disclosure Undertaking.

*"DTC"* means The Depository Trust Company, New York, New York, and its successors and assigns.

*"Early Termination Payment Date"* has the meaning given to such term in Section 17.4(d) of the Energy Purchase Agreement.

*"Electronic Means"* means the following communication methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by a Responsible Officer of the Trustee as available for use in connection with its services hereunder.

*"Eligible Bonds"* means any Bonds other than Bonds which a Responsible Officer of the Trustee actually knows to be owned by, for the account of, or on behalf of the Issuer or a Project Participant.

*"EMMA"* means the Electronic Municipal Market Access system, the website currently maintained by the Municipal Securities Rulemaking Board and any successor municipal securities disclosure website approved by the Securities and Exchange Commission.

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

*"Energy Purchase Agreement"* means the Prepaid Energy Sales Agreement, dated as of _____, 2022, between the Issuer and the Energy Supplier.

*"Energy Remarketing Reserve Fund"* means the Energy Remarketing Reserve Fund in established in Section 5.02.

*"Energy Supplier"* means Morgan Stanley Energy Structuring, L.L.C.

*"Energy Supplier Custodial Agreement"* means the Custodial Agreement dated as of the Initial Issue Date among the Commodity Swap Counterparty, the Energy Supplier, the Trustee and the Custodian.

*"Energy Supplier Guaranty"* means the Morgan Stanley Guarantee, as defined in the Energy Purchase Agreement.

*"Event of Default"* has the meaning given to such term in Section 8.01.

*"Extraordinary Expenses"* means extraordinary and nonrecurring expenses. Termination payments under the Commodity Swap shall not be considered an Extraordinary Expense.

*"Failed Remarketing"* means, (a) with respect to the Bonds on any Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) with respect to the Bonds (i) if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, the Issuer has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of such existing Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date.

*"Favorable Opinion of Bond Counsel"* means an Opinion of Bond Counsel to the effect that an action proposed to be taken is not prohibited by this Indenture and will not, in and of itself, cause interest on the applicable Bonds to be included in gross income for purposes of federal income taxation.

*"Fiduciary"* or *"Fiduciaries"* means the Trustee, the Paying Agents, the Bond Registrar, the Calculation Agents, the Custodian, the tender agent or any or all of them, as may be appropriate.

*"Final Fixed Rate Conversion Date"* means, with respect to a Series of Bonds, the date on which such Bonds begin to bear interest for a Term Rate Period which extends to the Final Maturity Date for such Series of Bonds.

*"Final Maturity Date"* means (a) with respect to the Series 2022A Bonds, _____ 1, 20__ and (b) with respect to any other Series of Bonds, the final Maturity Date set forth in the related Supplemental Indenture.

*"Fiscal Year"* means (a) the twelve-month period beginning on January 1 of each year and ending on and including the next December 31, or (b) such other twelve-month period established by the Issuer from time to time, upon Written Notice to the Trustee, as its fiscal year.

*"Fitch"* means Fitch Ratings, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer in a Written Notice delivered to the Trustee.

*"Fund"* or *"Funds"* means, as the case may be, each or all of the Funds established in Section 5.02 and Section 4.15.

*"General Reserve Fund"* means the General Reserve Fund established in Section 5.02.

*"Government Obligations"* means:

(a) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, obligations unconditionally guaranteed as to principal and interest by the United States of America, and evidences of ownership interests in such direct or unconditionally guaranteed obligations; or

(b) Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which: (i) are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice; (ii) are rated in the two highest Rating Categories of S&P and Moody's; and (iii) are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in clause (a) above, which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable notice, as appropriate; or

(c) Any other bonds, notes or obligations of the United States of America or any agency or instrumentality thereof which, if deposited with the Trustee for the purpose described in Section 12.01(c), will result in a rating on the Bonds which are deemed to have been paid pursuant to Section 12.01(c) that is in the same Rating Category of the obligations listed in subsection (a) above.

The determination as to whether any bond, note or other obligation constitutes a Government Obligation shall be made solely at the time of initial investment or purchase; *provided that,* the

Trustee shall have no responsibility for determining whether any bond, note or other obligation is a Government Obligation.

*"Indenture"* means this Trust Indenture as from time to time amended or supplemented by Supplemental Indentures in accordance with the terms hereof.

*"Index"* means the SIFMA Index, the SOFR Index or CPI, as applicable.

*"Index Rate"* means a SIFMA Index Rate, SOFR Index Rate or a CPI Index Rate, as applicable.

*"Index Rate Determination Certificate"* means a Written Certificate delivered by the Issuer in the form of *Exhibit B* hereto pursuant to Section 2.09(b)(i) or Section 2.14(b)(i).

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

*"Index Rate Reset Date"* means, with respect to (i) the Series 2022A-2 Bonds during the Initial Interest Rate Period, Thursday of each week or, if the SIFMA Index is not issued on Wednesday of such week, the Business Day next succeeding the day on which the SIFMA Index for such week is issued, and (ii) with respect to any other Series of Bonds bearing interest at an Index Rate, each date on which the applicable Index Rate is determined by the Calculation Agent based on the change in the applicable Index as of such date, which shall be the date or dates so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate Period (including, by way of example and not limitation, Thursday of each week, the first Business Day of each calendar month or the first Business Day of a calendar quarter).

*"Index Rate Tender Date"* means, with respect to any Index Rate Period for a Series of Bonds, the date so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate, which date shall be the next-occurring Mandatory Purchase Date, which shall be a date not later than the Final Maturity Date. The Index Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a Business Day is specified as an Index Rate Tender Date, then the Index Rate Tender Date shall be the Business Day immediately following such specified date.

*"Initial Interest Rate Period"* means, with respect to the Series 2022A Bonds, the period from the Initial Issue Date to and including _____, 20__; *provided* that in the event that all of the Series 2022A 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 2022A Bonds.

*"Initial Mandatory Purchase Date"* means _____ 1, 20__, which is the day following the last day of the Initial Interest Rate Period for the Series 2022A Bonds.

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

*"Interest Payment Date"* means, with respect to any Bond (a) during any Daily Interest Rate Period or Weekly Interest Rate Period for such Bond, the first Business Day of each Month, (b) during any Index Rate Period for such Bond, the first Business Day of each Month, except as otherwise provided by Supplemental Indenture for such Bond, (c) during any Term Rate Period for such Bond, each February 1 and August 1, *provided* that the first Interest Payment Dade for any Term Rate Period shall be at least ninety (90) days from the first day of such period, (d) during any Commercial Paper Interest Rate Period for such Bond, the day next succeeding the last day of each CP Interest Term for such Bond, (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 the Issuer delivered to the Trustee no later than 30 days prior to the effective date of the new Interest Rate Period, setting forth the applicable Interest Rate Period and, during such Interest Rate Period, the next occurring Mandatory Purchase Date, and (i) for Bonds bearing interest at a Term Rate, the interest rate(s) for such Bonds during such Interest Rate Period and (ii) for Bonds bearing interest at an Index Rate, the Index, the Index Rate Reset Date, the Applicable Spread and the CPI and the CPI Interest Period, if applicable, for such Bonds during such Interest Rate Period.

*"Interest Rate Period"* means a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period. Notwithstanding anything contained herein to the contrary, all Bonds of a Series shall at all times bear interest in the same Interest Rate Period. All Interest Rate Periods for all Series of Bonds shall terminate on the first to occur of the day prior to (a) the next occurring Mandatory Purchase Date or (b) the Final Maturity Date.

*"Interest Rate Swap"* means (a) the ISDA Master Agreement, the Schedule thereto and each Confirmation thereunder between the Issuer and the Interest Rate Swap Counterparty, pursuant to which the Issuer agrees to make payments to the Interest Rate Swap Counterparty at a fixed rate of interest and the Interest Rate Swap Counterparty agrees to make payments to the Issuer at a floating rate equal to the rate of interest borne by a related Series of Variable Rate Bonds, in each case with a notional amount equal to the Outstanding principal amount of such Series of Bonds, and (b) any replacement interest rate swap agreement permitted by Section 2.13(b), in each case as originally executed or as it may from time to time be supplemented, modified or amended pursuant to the terms thereof and this Indenture, as applicable; *provided that*, as long as no Interest Rate Swap has been entered into by the Issuer, all references herein to the

Interest Rate Swap, Interest Rate Swap Counterparty, Interest Rate Swap Receipts and Interest Rate Swap Payments (including, without limitation, Section 7.15) shall be disregarded.

*"Interest Rate Swap Counterparty"* means the counterparty to the Interest Rate Swap or replacement Interest Rate Swap, and any successor and assign thereof, that meets the requirements of Section 2.13(b).

*"Interest Rate Swap Payments"* means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the Interest Rate Swap Counterparty by the Issuer.

*"Interest Rate Swap Receipts"* means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the Issuer by the Interest Rate Swap Counterparty.

*"Internal Revenue Code"* means the Internal Revenue Code of 1986, as amended. References herein to sections of the Internal Revenue Code include the applicable U.S. Treasury Regulations promulgated thereunder.

*"Issue Date"* means (a) with respect to the Series 2022A Bonds, the Initial Issue Date, and (b) with respect to any other Series of Bonds, the date of initial issuance and delivery of such Series.

*"Issuer"* means California Community Choice Financing Authority, a joint powers authority organized pursuant to the laws of the State of California, including without limitation, the Act.

*"Issuer Custodial Agreement"* means the Custodial Agreement dated as of the Initial Issue Date among the Commodity Swap Counterparty, the Issuer, the Trustee and the Custodian.

*"Issuer Purchase Account"* means the Account by that name in the Bond Purchase Fund.

*"Liquidity Facility"* means, with respect to a Series of Bonds, a standby bond purchase agreement, letter of credit or similar facility providing liquidity support for such Series of Bonds and any Alternate Liquidity Facility provided in substitution of the foregoing.

*"Liquidity Facility Provider"* means, with respect to a Liquidity Facility for a Series of Bonds, the commercial bank or other financial institution providing the same and any other commercial bank or other financial institution issuing or providing (or having primary obligation for, or acting as agent for the financial institutions obligated under) an Alternate Liquidity Facility.

*"Mandatory Purchase Date"* means (i) the Initial Mandatory Purchase Date, and (ii) any subsequent date on which Bonds are required to be purchased pursuant to Section 4.13 or Section 4.14, respectively.

*"Maturity Date"* means, with respect to a Series of Bonds, each date upon which principal of such Bonds is due, as set forth in (a) Section 2.02(b) with respect to the Series 2022A Bonds, and (b) the related Supplemental Indenture with respect to any other Series of Bonds.

*"Maximum Lawful Rate"* means the maximum interest rate permitted by applicable law.

*"Maximum Rate"* means the lesser of 12% per annum and the Maximum Lawful Rate.

"*Member*" has the meaning given to such term in the recitals to this Indenture.

*"Minimum Daily Interest Rate"* means, with respect to a Series of Bonds bearing interest at a Daily Rate, the minimum rate determined by the Remarketing Agent by 10:00 a.m. New York City time pursuant to Section 2.05.

*"Month"* means a calendar month.

*"Moody's"* means Moody's Investors Service, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer in a Written Notice delivered to the Trustee.

"*MWh*" means a megawatt-hour.

*"Net Participant Shortfall Amount"* means, for any Month in which a Project Participant fails to pay the full amount due under its Power Supply Contract in time for such amount to be credited to the Revenue Fund for application pursuant to Section 5.05(a) and the full amount due by such Project Participant is not otherwise paid by the Energy Supplier pursuant to the Receivables Purchase Provisions, an amount equal to the positive result (if any) of (i) such Project Participant's Payment Deficiency Index Baseline for such Month minus (ii) the greater of (a) such Project Participant's Payment Deficiency Fixed Baseline for such Month, and (b) the actual amount paid by such Project Participant for such Month, *provided* that if the foregoing does not result in a positive number, then no Net Participant Shortfall Amount will exist for such Project Participant for such Month.

*"Operating Expenses"* means, to the extent properly allocable to the Clean Energy Project, (a) the Issuer's expenses for operation of the Clean Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Energy Purchase Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of the Issuer's obligations under the Power Supply Contracts; (b) any other current expenses or obligations required to be paid by the Issuer under the provisions of this Indenture (other than Debt Service on the Bonds and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of the Issuer's obligations under the Power Supply Contracts; (c) fees payable by the Issuer with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries;

(e) reasonable accounting, legal and other professional fees and expenses, and all other reasonable administrative and operating expenses of the Issuer, which are incurred by the Issuer with respect to the Bonds, this Indenture, or the Clean Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by the Issuer with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by the Issuer, including, without limitation, directors and officers liability insurance allocable to the Clean Energy Project; provided that, for purposes of Section 5.05(ii), Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. Commodity Swap Payments, litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

*"Operating Fund"* means the Operating Fund established in Section 5.02.

*"Opinion of Bond Counsel"* means a written opinion of either Bond Counsel or Special Tax Counsel (or written opinions of both of them) addressed to the Issuer and delivered to the Trustee.

*"Opinion of Counsel"* means an opinion signed by an attorney or firm of attorneys (who may be counsel to the Issuer) selected by the Issuer.

*"Optional Purchase Date"* means any date on which Bonds are to be purchased pursuant to Section 4.11.

*"Outstanding"* when used with reference to Bonds, means as of any date, Bonds theretofore or thereupon being authenticated and delivered under this Indenture except:

(a) Bonds cancelled (or portions thereof deemed to have been cancelled) by the Trustee at or prior to such date;

(b) Bonds (or portions of Bonds) for the payment or redemption of which moneys, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Indenture and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), *provided* that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice as provided in Article IV;

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to Article III or Section 4.06 or Section 11.06;

(d) Bonds paid or deemed to have been paid as provided in Section 12.01; and

(e) Bonds (or portions thereof) deemed to have been purchased pursuant to the provisions of any Supplemental Indenture in lieu of which other Bonds have been authenticated and delivered as provided in such Supplemental Indenture.

*"Outstanding Sold Receivables"* means, in respect of any Project Participant, Put Receivables that have been sold to the Energy Supplier pursuant to the Receivables Purchase Provisions, together with any interest accrued thereon pursuant to the Receivables Purchase Provisions, less any such Put Receivables and interest thereon that has been previously paid or repurchased from the Energy Supplier pursuant to the Receivables Purchase Provisions.

*"Participants"* means those broker dealers, banks and other financial institutions from time to time for which DTC holds Bonds as Securities Depository.

*"Paying Agent"* means the Trustee, its successors and assigns, and any other bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds, and its successor or successors hereafter appointed in the manner provided in this Indenture.

*"Payment Deficiency Fixed Baseline"* means, for any Month and any Project Participant, the amount such Project Participant would have been required to pay for such Month under its Power Supply Contract if the Contract Price for such Month had been determined using an Index Price (as defined under its Power Supply Contract) for such Month equal to the Fixed Price (as defined under the Commodity Swap) for such Month.

*"Payment Deficiency Index Baseline"* means, for any Month and any Project Participant, the amount required to be paid by such Project Participant for such Month under its Power Supply Contract.

*"Person"* means any and all natural persons, firms, associations, corporations and public bodies.

*"Pledged Funds"* means (a) the Project Fund, (b) the Revenue Fund, (c) the Debt Service Fund, (d) the General Reserve Fund, (e) the Assignment Payment Fund and (f) the Commodity Swap Payment Fund, in each case including the Accounts in each of such Funds and in the case of the Commodity Swap Payment Fund, subject to the prior pledge thereof in favor of the Commodity Swap Counterparty.

*"Power Supply Contract"* means (a) each of the contracts for the sale by the Issuer of Energy from or attributable to the Clean Energy Project to a Project Participant identified on Schedule I, as such contracts may be amended from time to time in accordance with the terms thereof and this Indenture, and (b) any other contract for the sale by the Issuer of Energy from or attributable to the Clean Energy Project entered into by a Person that becomes a Project Participant in accordance with the assignment and novation requirements set forth in Section 7.10(iv), as such contract may be amended from time to time in accordance with the terms thereof and this Indenture.

"*Prepaid Clean Energy Project Administration Agreement*" means the Prepaid Clean Energy Project Administration Agreement, dated as of _____, 2022, between the Issuer and East Bay Community Energy Authority, as the same may be amended from time to time.

*"Prevailing Market Conditions"* means, without limitation, the following factors: existing short term market rates for securities, the interest on which is excluded from gross income for federal income tax purposes or, as applicable, qualifies the issuer thereof to receive Subsidy Payments or similar benefit; indexes of such short term rates; the existing market supply and demand and the existing yield curves for short term and long term securities for obligations of credit quality comparable to the Bonds, the interest on which is excluded from gross income for federal income tax purposes; general economic conditions and financial conditions that may affect or be relevant to the Bonds; and such other facts, circumstances and conditions as the Remarketing Agent, in its sole discretion, shall determine to be relevant to the remarketing of the Bonds at the Purchase Price thereof.

*"Principal Installment"* means, as of any date of calculation, (a) the principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established, or (b) the unsatisfied balance (determined as provided in Section 5.10(c)) of any Sinking Fund Installments due on a certain future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments.

*"Project Administration Fee"* has the meaning assigned to such term in the Energy Supply Contracts.

*"Project Fund"* means the Project Fund established in Section 5.02.

*"Project Participant"* means (a) a Public Agency that is an Energy purchaser under a Power Supply Contract and identified as a "Project Participant" in Schedule I and (b) any other Person that enters into a Power Supply Contract with the Issuer in accordance with the assignment and novation requirements set forth in Section 7.10(iv).

*"Public Agency"* means a state, a governmental or political subdivision of a state and a corporate instrumentality or public corporation of a state or a subdivision of a state, including without limitation any of their departments or agencies, counties, county boards of education, county superintendents of schools, cities, public corporations, public districts, public commissions or joint powers authorities.

*"Purchase Date"* means an Optional Purchase Date or a Mandatory Purchase Date, as the case may be.

*"Purchase Price"* means (a) with respect to any Purchased Bond to be purchased on an Optional Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date plus accrued and unpaid interest thereon, unless such Optional Purchase Date is an Interest Payment Date for such Bond, in which case interest on such Bond shall not be included in the Purchase Price of such Bond but shall be paid to the Owner of such Bond in accordance with the interest payment provisions of this Indenture, (b) except as provided in clause (c) below, with

respect to any Purchased Bond to be purchased on a Mandatory Purchase Date, an amount equal to the principal amount of such Bond Outstanding on such date, and (c) in the case of a purchase of a Bond bearing interest at a Term Rate pursuant to Section 4.14 with respect to which the new Interest Rate Period commences prior to the day originally established as the last day of the preceding Term Rate Period, the optional redemption price for such Bond set forth in Section 4.03(b) or in an applicable Supplemental Indenture which would have been applicable to such Bond if the preceding Term Rate Period had continued to the day originally established as its last day. Accrued interest due on any Bonds to be purchased on a Mandatory Purchase Date shall be paid from amounts on deposit in the Debt Service Account of the Debt Service Fund on such date in accordance with Section 5.07.

*"Purchased Bonds"* means any Bonds required to be purchased on a Purchase Date.

*"Put Option Notice"* has the meaning set forth in Section 2.1(a) of the Receivables Purchase Provisions.

*"Put Receivable"* has the meaning set forth in Section 1.1 of the Receivables Purchase Provisions.

*"Qualified Investments"* means any of the following investments, if and to the extent that the same are rated (or whose financial obligations to the Issuer receive credit support from an entity rated) at least at the credit rating of the Energy Supplier, or, if the Energy Supplier is not rated, the guarantor of the Energy Supplier (except for (c) below), and are at the time authorized for such purpose by law:

(a) Direct obligations of the United States government or any of its agencies;

(b) Obligations guaranteed as to principal and interest by the United States government or any of its agencies;

(c) Certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the Issuer, and other evidences of deposit at state and federally chartered banks, savings and loan institutions or savings banks, including the Trustee or any of its affiliates (each having the highest short term rating by each Rating Agency then rating the Bonds) deposited and collateralized as required by law;

(d) Repurchase agreements entered into with the United States or its agencies or with any bank, broker dealer or other such entity, including the Trustee and its affiliates, so long as the obligation of the obligated party is secured by a perfected pledge of obligations that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(e) Guaranteed investment contracts, forward delivery agreements, interest rate exchange agreements or similar agreements providing for a specified rate of return over a specified time period; *provided, however,* that guaranteed investment contracts, forward

delivery agreements or similar agreements shall meet the conditions set forth in the preamble to this definition of Qualified Investments;

(f) Direct general obligations of a state of the United States, or a political subdivision or instrumentality thereof, having general taxing powers;

(g) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by or on behalf of the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of principal of and interest on such obligations and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(h) Money market funds registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, and having a rating in the highest Rating Category by each Rating Agency at the time of investment, including money market funds of the Trustee and funds for which the Trustee or its affiliates (i) provide investment or other management services and (ii) serve as investment manager, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (A) the Trustee or its affiliate receives or collects fees from such funds for services rendered, and (B) services performed by the Trustee pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliate; or

(i) Any other investments permitted by applicable law for the investment of the funds of the Issuer and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

provided, that the Issuer shall monitor, or shall cause to be monitored, ratings and shall determine whether any investment made is or continues to be a Qualified Investment, and the Trustee shall have no responsibility whatsoever for monitoring ratings or determining whether any investment is or continues to be a Qualified Investment.

*"Rating Agency"* means Fitch, Moody's or S&P, or any other rating agency so designated in a Supplemental Indenture that, at the time, rates the Bonds.

*"Rating Category"* means one or more of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such rating category or categories by a numerical modifier, a plus or minus, or otherwise.

*"Rating Confirmation"* means evidence satisfactory to the Issuer, so designated in a Written Statement of the Issuer delivered to the Trustee, that upon the effectiveness of any proposed action, all Outstanding Bonds will continue to be assigned at least the same or equivalent ratings (including the same or equivalent numerical, plus or minus, or other modifiers within a Rating Category) by each Rating Agency then rating such Outstanding Bonds.

*"Rebate Payments"* means those portions of moneys or securities held in any Fund or Account that are required to be paid to the United States Treasury Department under the requirements of Section 148(f) of the Internal Revenue Code.

*"Receivables Purchase Provisions"* means (i) initially, the provisions set forth in Exhibit G to the Energy Purchase Agreement, and (ii) any successor provisions for the purchase and sale of receivables in respect of amounts due and unpaid under the Power Supply Contracts and provided in a Written Notice of the Issuer to the Trustee.

*"Redemption Account"* means the Redemption Account in the Debt Service Fund established in Section 5.02.

*"Redemption Price"* means, with respect to any Bond, the amount payable upon redemption thereof pursuant to such Bond or this Indenture.

*"Reference Month"* means, with respect to each CPI Index Rate Reset Date, the third calendar month preceding such CPI Index Rate Reset Date.

*"Refunding Bonds"* means a Series of Bonds authorized to be issued pursuant to Section 2.01(c) for the sole purposes of refunding or defeasing (in accordance with Article XII) in whole a Series of Bonds then Outstanding, and paying the Cost of Acquisition with respect to such Refunding Bonds.

*"Regular Record Date"* means (i) with respect to any Interest Payment Date in respect of any Daily Interest Rate Period, Weekly Interest Rate Period, Index Rate Period, Commercial Paper Interest Rate Period, the Business Day immediately preceding such Interest Payment Date, and (ii) with respect to any Interest Payment Date in respect of any Term Rate Period, the 15th day of the Month (whether or not such day is a Business Day) immediately preceding the Month in which such Interest Payment Date falls.

*"Remarketing Agent"* means, with respect to any Series of Bonds, the entity appointed as the remarketing agent for such Series pursuant to the related Remarketing Agreement and, if applicable, the related Supplemental Indenture.

*"Remarketing Agreement"* means, with respect to any Series of Bonds, the remarketing agreement, if any, entered into between the Issuer and the Remarketing Agent for such Series of Bonds.

*"Remarketing Proceeds Account"* means the Account by that name within the Bond Purchase Fund.

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

*"Remediation Remarketing Purchase Price"* has the meaning given to such term in the Remarketing Provisions.

*"Re-Pricing Agreement"* means the Re-Pricing Agreement dated as of the Initial Issue Date between the Issuer and the Energy Supplier, as the same may be amended in accordance with its terms.

*"Reset Period"* means Initial Reset Period or Reset Period, as the case may be, each as defined in the Re-Pricing Agreement.

*"Responsible Officer"* means, when used with respect to the Trustee, the Custodian or the Calculation Agent, as applicable, any managing director, president, vice president, senior associate, associate or other officer of the Trustee, the Custodian or the Calculation Agent, respectively, within its designated corporate trust office for delivery of notice specified in Section 12.11 (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at such office because of such person's knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

*"Revenue Fund"* means the Revenue Fund established in Section 5.02.

*"Revenues"* means:

(a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by the Issuer from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by the Issuer under the Power Supply Contracts and the Energy Purchase Agreement or otherwise payable to the Trustee for the account of the Issuer for the sale and/or transmission of Energy or otherwise with respect to the Clean Energy Project;

(b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund;

(c) any Commodity Swap Receipts received by the Trustee on behalf of the Issuer; and

(d) any Subsidy Payments received by the Trustee, on behalf of the Issuer, in accordance with Section 3.10 of this Indenture.

*provided that,* the term "Revenues" shall not include: (u) any Termination Payment pursuant to the Energy Purchase Agreement; (v) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to Section 5.11; (w) any amounts paid by the Project Participants under a Prepaid Clean Energy Project Administration Agreement; (x) any Assignment Payment received from the Energy Supplier;

(y) Interest Rate Swap Receipts; and (z) amounts paid by the Project Participants in respect of the Project Administration Fee.

*"S&P"* means S&P Global Ratings, a division of S&P Global Inc., its successors and assigns, and, if such entity shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer in a Written Notice delivered to the Trustee.

*"Scheduled Debt Service Deposits"* means the required monthly deposits to the Debt Service Account in the Debt Service Fund and the required cumulative deposits to the Debt Service Account in the Debt Service Fund in respect of the Debt Service coming due on the Bonds on each Bond Payment Date pursuant to Section 5.05(a)(iii) and as set forth on Schedule II hereto. Schedule II shall be revised (a) by Written Notice of the Issuer delivered at the time of its designation of each subsequent Interest Rate Period, and (b) by each Supplemental Indenture authorizing the issuance of Refunding Bonds.

*"Securities Depository"* means DTC, or its nominee, and its successors and assigns.

*"Series"* means the Series 2022A-1 Bonds, Series 2022A-2 Bonds and any other Bonds designated as a Series authorized to be issued hereunder pursuant to Section 2.01.

"*Series 2022A Bonds*" means, together, the Series 2022A-1 Bonds and Series 2022A-2 Bonds.

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

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

*"SIFMA Index"* means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Refinity which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by the Issuer in compliance with Section 2.09(b)(v).

*"SIFMA Index Rate"* means a per annum rate of interest equal to the sum of (a) the SIFMA Index then in effect, plus (b) the Applicable Spread.

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

*"Sinking Fund Installment"* means, for the Series 2022A Bonds, the amounts so designated in Section 4.02, and with respect to any other Series of Bonds, each amount, if any, so designated in the applicable Supplemental Indenture.

"*SOFR*" means the Secured Overnight Financing Rate reported on the NY Federal Reserve's Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing SOFR as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date. If SOFR is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date designated by the Issuer in writing (with notice to, and which is available to, the Calculation Agent) in compliance with Section 2.09(b).

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

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

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

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

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

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

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

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

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

*"Special Tax Counsel"* means 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 the Issuer. Bond Counsel may serve as Special Tax Counsel.

"Specified Project Participant" has the meaning assigned to such term in Section 1.1 of the Receivables Purchase Provisions.

*"State"* means the State of California.

"*Subsidy Payments*" means (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 the Issuer and the Trustee in accordance with Article X.

*"Swap Payment Deficiency"* means, as of any date, (a) the amount of the next Commodity Swap Payment expected to become due, minus (b) the amount on deposit in the Commodity Swap Payment Fund; *provided, however*, that if such difference is a negative number, then the Swap Payment Deficiency shall be zero.

*"Tax Agreement"* means the Tax Certificate and Agreement of the Issuer with respect to the Bonds dated as of the Initial Issue Date.

*"Term Rate"* means, with respect to a Series of Bonds, a fixed interest rate for each maturity of such Bonds established in accordance with Section 2.07.

*"Term Rate Conversion Date"* means, with respect to a Series of Bonds, each date on which such Bonds begin to bear interest at a Term Rate pursuant to the provisions of Section 2.07, including each date on which a new Term Rate Period is established for such Bonds and the Final Fixed Rate Conversion Date with respect to such Bonds.

*"Term Rate Period"* means, with respect to a Series of Bonds, each period during which a Term Rate is in effect for such Bonds.

*"Term Rate Tender Date"* means (a) with respect to the initial Term Rate Period for the Series 2022A Bonds maturing on the Final Maturity Date, the Initial Mandatory Purchase Date, and (b) with respect to any other Term Rate Period for a Series of Bonds, the date so specified in

the related Supplemental Indenture or notice of Conversion to or continuation of such Term Rate Period provided by the Issuer pursuant to Section 2.07(b), as applicable, which date shall be a Mandatory Purchase Date pursuant to Section 4.13 and shall not be later than the Final Maturity Date for such Series of Bonds. The Term Rate Tender Date shall always be a Business Day, unless such date is the Final Maturity Date. If a date (other than the Final Maturity Date) that is not a Business Day is specified as a Term Rate Tender Date, then the Term Rate Tender Date shall be the Business Day immediately following such specified date.

*"Termination Payment"* has the meaning given to such term in the Energy Purchase Agreement.

*"Trust Estate"* means (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of the Issuer in, to and under the Power Supply Contracts, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment (e) all right, title and interest of the Issuer in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of the Issuer in, to and under the Energy Supplier Guaranty, (g) all right, title and interest of the Issuer in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of the Issuer in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

*"Trustee"* means The Bank of New York Mellon Trust Company, N.A. and its successor or successors and any other corporation or national banking association which may at any time be substituted in its place pursuant to this Indenture.

*"Undelivered Bond"* means any Bond which constitutes an Undelivered Bond under the provisions of Section 4.16.

*"Underwriter"* means (a) with respect to the Series 2022A Bonds, Morgan Stanley & Co. LLC, and (b) with respect to any other Series of Bonds, the municipal securities broker dealer engaged by the Issuer to underwrite such Series of Bonds.

*"Variable Rate Bonds"* means Bonds bearing interest at a Daily Interest Rate, a Weekly Interest Rate, CP Interest Term Rates or an Index Rate.

*"Weekly Interest Rate"* means, with respect to a Series of Bonds, a variable interest rate established for such Bonds in accordance with Section 2.06.

*"Weekly Interest Rate Period"* means, with respect to a Series of Bonds, each period during which a Weekly Interest Rate is in effect for such Series of Bonds.

*"Written Certificate," "Written Direction," "Written Instrument," "Written Notice," "Written Request"* and *"Written Statement"* of the Issuer means in each case an instrument in writing signed on behalf of the Issuer by an Authorized Officer thereof. Any such instrument and any supporting opinions or certificates may, but need not, be combined in a single instrument with any other instrument, opinion or certificate, and the two or more so combined shall be read and construed so as to form a single instrument. Any such instrument may be based, insofar as it relates to legal, accounting or engineering matters, upon the opinion or certificate of counsel, consultants, accountants or engineers, unless the Authorized Officer signing such Written Certificate, Direction, Instrument, Notice, Request or Statement knows, or in the exercise of reasonable care should know, that the opinion or certificate with respect to the matters upon which such Written Certificate, Direction, Instrument, Notice, Request or Statement may be based, as aforesaid, is erroneous. The same Authorized Officer, or the same counsel, consultant, accountant or engineer, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different Authorized Officers, counsel, consultants, accountants or engineers may certify to different facts, respectively. Every Written Certificate, Direction, Instrument Notice, Request or Statement of the Issuer, and every certificate or opinion of counsel, consultants, accountants or engineers provided for herein shall include:

(a) a statement that the person making such certificate, direction, instrument, notice, request, statement or opinion has read the pertinent provisions of this Indenture to which such certificate, direction, notice, request, statement or opinion relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate, direction, instrument, notice, request, statement or opinion is based;

(c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; and

(d) with respect to any statement relating to compliance with any provision hereof, a statement whether or not, in the opinion of such person, such provision has been complied with.

*Section 1.02. Captions*. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope and intent of any provisions of this Indenture.

*Section 1.03. Rules of Construction*. Except where the context otherwise requires, words of any gender shall include correlative words of the other genders; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, trusts, corporations or governments or agencies or political subdivisions thereof. The term "include" and its derivations are not limiting.

References herein to contracts and agreements include all amendments or supplements thereto made in accordance with the terms thereof, and any reference to a party to any such

agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof. References herein to Articles, Sections, Exhibits and Schedules are references to the Articles, Sections, Exhibits and Schedules of and to this Indenture.

*Section 1.04. Governing Law*. This Indenture shall be governed by and construed in accordance with the laws of the State.

*Section 1.05. Consents*. Whenever the consent, notice or direction of the Bondholders, the Energy Supplier, the Commodity Swap Counterparty, the Interest Rate Swap Counterparty or the Issuer is required under the terms of this Indenture, such consent, notice or direction, as applicable, shall be evidenced by a written instrument providing for such consent, delivered to the Trustee.

## ARTICLE II

## AUTHORIZATION AND ISSUANCE OF BONDS

*Section 2.01. Authorization of Bonds and Refunding Bonds; Application of Proceeds*.

(a) For the purpose of financing the Cost of Acquisition of the Clean Energy Project, the $_____ Clean Energy Project Revenue Bonds, Series 2022A-1 (Term Rate), which shall bear interest during the Initial Interest Rate Period at a Term Rate, and the $_____ Clean Energy Project Revenue Bonds, Series 2022A-2 ([SIFMA] Index Rate), which shall bear interest during the Initial Interest Rate Period at a [SIFMA] Index Rate, and which shall be entitled to the benefit, protection and security of this Indenture are hereby authorized to be issued.

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

(c) In addition to the Series 2022A Bonds, there are hereby authorized to be issued by Supplemental Indenture one or more Series of Refunding Bonds for the purpose of refunding any Series of Bonds then Outstanding hereunder, subject to the following conditions:

(i) the Supplemental Indenture providing for issuance of a Series of Refunding Bonds shall set forth (A) the Bonds to be refunded, (B) the Series designation and aggregate principal amount of the Refunding Bonds, (C) the Maturity Dates (which shall be no later than the Final Maturity Date) and any Sinking Fund Installments for the Refunding Bonds, (D) the Scheduled Debt Service Deposits for such Bonds, (E) the initial Interest Rate Period for such Refunding Bonds, and if such Interest Rate Period is to be an Index Rate Period, the applicable Index or CPI, and the Applicable Spread, and (F) such other terms and provisions concerning the Refunding Bonds as are not inconsistent with this Indenture;

(ii) a Series of Refunding Bonds issued in a Term Rate Period may be sold at a premium;

(iii) the proceeds of a Series of Refunding Bonds (including any sale premium) shall be used exclusively to pay the Cost of Acquisition relating to the Refunding Bonds;

(iv) if such Bonds are Variable Rate Bonds, and if such Bonds are to bear interest at a Daily Interest Rate, a Weekly Interest Rate or CP Interest Term Rates, the Issuer shall have appointed a Remarketing Agent for such Bonds 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 2022A Bonds; Payment*. (a) The Series 2022A 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 2022A Bonds shall be payable by the Trustee at its designated corporate trust office and such banking institution is hereby appointed Paying Agent and Bond Registrar for the Bonds; *provided* that interest on the Bonds may be paid, at the option of the Issuer, by check payable to the order of the Person entitled thereto, and mailed by first-class mail, postage prepaid, to the address of such Person as shall appear on the books of the Bond Registrar as of the close of business on the Regular Record Date for such Interest Payment Date, whether or not such Regular Record Date is a Business Day, which books the Bond Registrar shall keep for such purposes at its designated corporate trust office. Upon the written request of any Owner of one million dollars ($1,000,000) or more in aggregate principal amount of Bonds received by the Trustee prior to the applicable Regular Record Date (which request shall remain in effect until rescinded in writing by such Owner), interest shall be paid on each Interest Payment Date by wire transfer of immediately available funds to an account maintained in any bank or trust company in the United States of America that is a member of the Federal Reserve System designated in writing by such Owner. The principal and Redemption Price of and interest on all Bonds shall also be payable at any other place which may be provided

for such payment by the appointment of any other Paying Agent or Paying Agents as permitted by this Indenture. The Issuer shall provide Written Notice to the Trustee of the appointment of any additional Paying Agent.

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

SERIES 2022A-1 BONDS

| MATURITY DATE | PRINCIPAL AMOUNT | INTEREST RATE |
|---|---|---|
| | $ | % |

SERIES 2022A-2 BONDS

| MATURITY DATE | PRINCIPAL AMOUNT | INDEX | APPLICABLE SPREAD [/FACTOR] |
|---|---|---|---|
| | $ | [SIFMA][SOFR] Index | __ basis points |

(c) Interest on the Series 2022A Bonds shall be payable to the date on which such Bonds shall have been paid in full. Interest on the Series 2022A-1 Bonds shall be computed on the basis

of a 360-day year consisting of twelve 30-day months. Interest on the Series 2022A-2 Bonds shall be computed on the basis of a 365 or 366-day year, as applicable, and the actual number of days elapsed. Interest on the Series 2022A Bonds shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Accrual Date for such period and ending on the day immediately preceding such Interest Payment Date. The first Interest Payment Date for the Series 2022A-1 Bonds is _____ 1, 2022. The first Interest Payment Date for the Series 2022A-2 Bonds is _____ 1, 2022.

(d) The initial interest rates for the Bonds of each Series and the determination for such Bonds of the Daily Interest Rate, the Weekly Interest Rate, the Index Rate or the Term Rate and each CP Interest Term and CP Interest Term Rate by the applicable Calculation Agent or Remarketing Agent for such Bonds, as the case may be, and shall be conclusive and binding upon the Issuer, the Trustee, the Remarketing Agent and the Owners of the Bonds.

(e) In connection with any Term Rate Conversion Date of a Series of Bonds, the Sinking Fund Installments, if any, established for such Series pursuant to the applicable Supplemental Indenture may be re-designated as Maturity Dates and Sinking Fund Installments for such Bonds on the Term Rate Conversion Date for such Bonds as provided for in the applicable Supplemental Indenture.

*Section 2.03. Conditions for Issuance of Bonds*. The Bonds of each Series shall be executed by the Issuer and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered upon the Written Direction of the Issuer, but only upon the receipt by the Trustee of:

(a) A copy, certified by an Authorized Officer, of a resolution and/or evidence of any other official actions taken by the Issuer that authorize the execution and delivery of the Bonds of such Series, together with a Written Request as to the authentication and delivery of the Bonds of such Series, signed by an Authorized Officer;

(b) An Opinion or Opinions of Counsel to the effect that (i) the Issuer has the right and power to authorize and enter into this Indenture, the Power Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap, and (ii) the Power Supply Contracts, the Energy Purchase Agreement, the Commodity Swap and any Interest Rate Swap have been duly and lawfully authorized, executed and delivered by the Issuer and (assuming due authorization, execution and delivery by, and validity and binding effect upon, the other parties thereto) are valid and binding obligations of the Issuer, and no other authorization for the Power Supply Contracts, the Energy Purchase Agreement, the Commodity Swap or any Interest Rate Swap is required; *provided,* that such Opinion(s) of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, and the valid exercise of the sovereign police

powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy;

(c) An Opinion of Bond Counsel to the effect that (i) the Bonds of such Series constitute the valid and binding limited obligations of the Issuer; (ii) this Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer; and (iii) this Indenture creates a valid pledge to secure the payment of principal of and interest on the Bonds, of the Trust Estate, subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture; provided, that such Opinion of Bond Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium reorganization, arrangement, fraudulent conveyance, or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, and the valid exercise of the sovereign police powers of the State, and may state that no opinion is being rendered as to the availability of any particular remedy under the financing documents;

(d) An opinion of Special Tax Counsel to the effect that, if applicable, interest on the Bonds of such Series is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code and is exempt from State of California personal income taxes (it being agreed that if Special Tax Counsel also serves as Bond Counsel, the opinion described in this clause (d) may be consolidated with the Opinion of Bond Counsel described in the preceding clause (c));

(e) Executed or certified copies of the Power Supply Contracts with each of the Project Participants specified on Schedule I;

(f) An opinion of counsel to each of the initial Project Participants to the effect that the Power Supply Contract between such Project Participant and the Issuer has been duly authorized, executed and delivered by such Project Participant, is the valid and binding obligation of such Project Participant and is enforceable in accordance with its terms, subject to customary assumptions and exceptions with respect to enforceability and such additional exceptions as may be agreed to by the Issuer and the Underwriter;

(g) A rating on the Bonds from at least one Rating Agency.

*Section 2.04. Initial Interest Rate Period; Subsequent Interest Rate Periods*. (a) The Series 2022A Bonds shall be initially issued in the Interest Rate Period set forth in Section 2.02(b). Upon the purchase of the Series 2022A Bonds on a Mandatory Purchase Date, the Interest Rate Period for each Series of the Series 2022A 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 2022A Bonds shall, by

Supplemental Indenture, be divided into separate Series or sub-Series corresponding to such Interest Rate Periods.

(b) In the manner hereinafter provided, the term of each Series of Bonds will be divided into consecutive Interest Rate Periods during each of which such Bonds shall bear interest at the Daily Interest Rate, the Weekly Interest Rate, CP Interest Term Rates, Term Rates or an Index Rate; *provided, however,* that the Interest Rate Period shall be the same for all Bonds of a Series, and, notwithstanding anything herein to the contrary, no Bond shall bear interest in excess of the Maximum Rate. The initial Interest Rate Period for any Series of Bonds (other than the Initial Interest Rate Period for the Series 2022A Bonds) shall be established pursuant to the related Supplemental Indenture.

*Section 2.05. Daily Interest Rate Period*.

(a) *Determination of Daily Interest Rates*. During each Daily Interest Rate Period for a Series of Bonds, the Bonds of such Series shall bear interest at the Daily Interest Rate, which shall be determined by the Remarketing Agent on or before 11:00 a.m., New York City time, on each Business Day for such Business Day. The Remarketing Agent will advise the Trustee by Electronic Means of the final Daily Interest Rate by 12:00 noon, New York City time, on the day such rate is determined. The Daily Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by the Bonds of the applicable Series, would enable the Remarketing Agent to sell the Bonds of such Series on that Business Day at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. With respect to any day that is not a Business Day, the Daily Interest Rate for that day shall be the same Daily Interest Rate established for the immediately preceding Business Day. In the event the Remarketing Agent fails to establish a Daily Interest Rate for any Business Day, then the Daily Interest Rate for that Business Day shall be the Daily Interest Rate for the immediately preceding Business Day if the Daily Interest Rate for the immediately preceding Business Day was established by the Remarketing Agent. Subject to the provisions of Section 2.10(d), in the event that the Daily Interest Rate for the immediately preceding Business Day was not determined by the Remarketing Agent, or in the event that the Daily Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the Daily Interest Rate shall be deemed to be equal to the SIFMA Index on the Business Day such Daily Interest Rate would otherwise be determined as provided herein for such Daily Interest Rate Period.

(b) *Conversion to Daily Interest Rate Period*. Subject to Section 2.10, at any time the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at a Daily Interest Rate. Such direction of the Issuer shall specify the proposed effective date of such Conversion to a Daily Interest Rate Period, which shall be a Business Day not earlier than the 30th day following the second Business Day after receipt by the Trustee of the Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the

Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, such direction shall be accompanied by a form of notice required by Section 2.05(c) and the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Daily Interest Rate Period. Upon the Conversion of any Series of Bonds to the Daily Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate borne by such Series of Bonds shall be a Daily Interest Rate as provided in Section 2.05(a).

(c) *Notice of Conversion to Daily Interest Rate Period*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Daily Interest Rate Period as provided in Section 2.05(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Daily Interest Rate Period to the Owners of such Bonds not less than 30 days prior to the proposed effective date of such Daily Interest Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds will be converted to a Daily Interest Rate Period unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Daily Interest Rate Period; (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

*Section 2.06. Weekly Interest Rate Period*.

(a) *Determination of Weekly Interest Rates*. The Weekly Interest Rate for the initial Weekly Interest Rate Period following the issuance of a Series of Bonds bearing interest in a Weekly Interest Rate Period or Conversion of a Series of Bonds to a Weekly Interest Rate Period shall be determined on or prior to the first day of such Weekly Interest Rate Period and shall apply to the period commencing on the first day of such Weekly Interest Rate Period and ending on the succeeding Wednesday (whether or not a Business Day). Thereafter, during each Weekly Interest Rate Period for a Series of Bonds, the Bonds of such Series shall bear interest at the Weekly Interest Rate, which shall be determined by the Remarketing Agent by no later than 5:00 p.m., New York City time, on Wednesday of each week during such Weekly Interest Rate Period, or if such day shall not be a Business Day, then on the next succeeding Business Day. Each Weekly Interest Rate so determined shall apply to the period commencing on Thursday (whether or not a Business Day) and ending on the next succeeding Wednesday (whether or not a Business Day), unless such Weekly Interest Rate Period shall end on a day other than Wednesday, in which event the last Weekly Interest Rate for such Weekly Interest Rate Period shall apply to the period commencing on Thursday (whether or not a Business Day) and ending on the last day of such Weekly Interest Rate Period. The Weekly Interest Rate shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which,

if borne by the Bonds of the applicable Series, would enable the Remarketing Agent to sell the Bonds of such Series on the effective date of such rate at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Interest Rate for any week, then the Weekly Interest Rate for such week shall be the same as the Weekly Interest Rate for the immediately preceding week if the Weekly Interest Rate for such preceding week was determined by the Remarketing Agent. Subject to the provisions of Section 2.10(d), in the event that the Weekly Interest Rate for the immediately preceding week was not determined by the Remarketing Agent, or in the event that the Weekly Interest Rate determined by the Remarketing Agent shall be held to be invalid or unenforceable by a court of law, then the interest rate for such week shall be equal to the SIFMA Index on the day such Weekly Interest Rate would otherwise be determined as provided herein for such Weekly Interest Rate Period.

(b) *Conversion to Weekly Interest Rate Period*. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at a Weekly Interest Rate. Such direction of the Issuer shall specify the proposed effective date of such Conversion to a Weekly Interest Rate Period, which shall be a Business Day not earlier than the later of (a) the 30th day following the second Business Day after receipt by the Trustee of such Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, such direction shall be accompanied by a form of notice required by Section 2.06(c) and the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Weekly Interest Rate Period. Upon Conversion of any Series of Bonds to the Weekly Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate borne by such Series of Bonds shall be a Weekly Interest Rate as provided in Section 2.06(a).

(c) *Notice of Conversion to Weekly Interest Rate*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Weekly Interest Rate Period as provided in Section 2.06(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Weekly Interest Rate Period to the Owners of such Bonds not less than 30 days prior to the proposed effective date of such Weekly Interest Rate Period. Such notice shall state: (i) that the Interest Rate Period on such Bonds will be converted to a Weekly Interest Rate unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Daily Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Weekly Interest Rate Period; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the

Interest Rate Period for the Bonds of such Series to a Weekly Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

*Section 2.07. Term Rate Period.*

(a) *Determination of Term Rates*. For each Term Rate Period for a Series of Bonds, (i) the Issuer may by Written Notice to the Trustee delivered in connection with a Term Rate Conversion Date establish one or more Maturity Dates for the Bonds of such Series and Sinking Fund Installments for any maturities of the Bonds of such Series, and (ii) each maturity of the Bonds of such Series shall bear interest at a Term Rate; provided that the Term Rate, Maturity Dates and Sinking Fund Installments for each maturity of Bonds of any Series upon initial issuance of such Bonds, if any, shall be specified in this Indenture or a Supplemental Indenture providing for the issuance of such Series of Bonds. The Term Rate for each maturity of Bonds of a Series bearing interest in the Term Rate Period shall be determined by the Underwriter or the Remarketing Agent, as applicable, on a Business Day no later than the Issue Date or the Term Rate Conversion Date for such Series of Bonds, as applicable. Subject to the provisions of Section 2.07(d), each Term Rate shall be the rate of interest per annum determined by the Underwriter or the Remarketing Agent, as applicable, to be the minimum interest rate which, if borne by the Bonds of the applicable Series and maturity, would enable the Underwriter or the Remarketing Agent, as the case may be, to sell such Bonds and maturity on such date at a price (without regard to accrued interest) equal to 100% of the principal amount thereof. If, for any reason, with respect to any Series of Bonds being converted to a Term Rate Period, the Term Rate for such Term Rate Period is not determined by the Remarketing Agent on or prior to the first day of such Term Rate Period, then the Interest Rate Period for the Bonds of the applicable Series shall be a Weekly Interest Rate Period and such Weekly Interest Rate Period shall continue until such time as the Interest Rate Period for such Series of Bonds shall have been converted to a Daily Interest Rate Period, a Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period as provided herein.

(b) *Conversion to or Continuation of Term Rate Period*. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at Term Rates. Such direction of the Issuer shall specify (i) the proposed effective date of the Term Rate Period, which date shall be a Business Day not earlier than the 30th day following receipt by the Trustee of such Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture; (ii) the last day of such Term Rate Period, which day shall be either the day immediately prior to the Final Maturity Date for the applicable Series of Bonds, or a day which both immediately precedes a Business Day and is at least one hundred eighty one (181) days after the effective date of the Term Rate Period; (iii) with respect to any such

Term Rate Period, may specify redemption prices and periods different than those set forth in this Indenture or the applicable Supplemental Indenture providing for the issuance of such Series of Bonds, subject to the Favorable Opinion of Bond Counsel as provided in Section 2.07(b)(iii). In addition, such direction shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Term Rate Conversion Date and by a form of the notice to be mailed by the Trustee as provided in Section 2.07(c). Upon Conversion of any Series of Bonds to the Term Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, the interest rate or rates borne by such Series of Bonds shall be Term Rates as provided in Section 2.07(a). The day following the last day of any Term Rate Period for a Series of Bonds shall be a Term Rate Tender Date for such Series of Bonds. After the Final Fixed Rate Conversion Date for a Series of Bonds, the Bonds of such Series shall no longer be subject to or have the benefit of the provisions of Section 4.11 through Section 4.22.

(c) *Notice of Conversion to or Continuation of Term Rate*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Term Rate Period as provided in Section 2.07(b), the Trustee shall give notice by first-class mail of the Conversion of such Bonds to bear interest in a (or the establishment of another) Term Rate Period for a Series of Bonds to the Owners of the Bonds of such Series not less than thirty (30) days prior to the proposed effective date of such Term Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds shall be converted to, or continue to be, a Term Rate Period unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Term Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the Term Rate Conversion Date; (ii) that such Bonds are subject to mandatory tender for purchase on the Term Rate Conversion Date and setting forth the applicable Purchase Price and the place of delivery for purchase of such Bonds; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Term Rate Period as provided in Section 2.10(b)]; and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(d) *Sale at Premium or Discount*. Notwithstanding the provisions of Section 2.07(a), the Term Rate for each maturity of any Series of Bonds as initially issued, or the Term Rate for each maturity of any other Series of Bonds upon Conversion to a Term Rate Period, shall be the rate of interest per annum determined by the Underwriter or the Remarketing Agent, as applicable, to be the interest rate which, if borne by the Bonds of such Series and maturity, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds of such Series and maturity at a price (without regard to accrued interest) which will result in the lowest net interest cost for the Bonds of such Series and maturity, after taking into account any premium or discount at which the Bonds

of such Series and maturity are sold by the Underwriter or the Remarketing Agent, as applicable, *provided* that:

(i) The Underwriter or the Remarketing Agent, as applicable, certifies in writing to the Trustee and the Issuer that the sale of the Bonds of such Series at the interest rate and premium or discount specified by the Underwriter or the Remarketing Agent, as applicable, is expected to result in the lowest net interest cost for such Bonds;

(ii) The Issuer consents in writing to the sale of the Bonds of such Series at such premium or discount;

(iii) In the case of the Bonds of such Series to be sold at a premium, the Underwriter or the Remarketing Agent, as applicable, shall transfer the amount of such premium to the Trustee for deposit into such Funds and Accounts as shall be specified in a Written Direction of the Issuer;

(iv) On or before the date of determination of the Term Rates for the Bonds of such Series, the Issuer delivers to the Trustee and the Remarketing Agent a form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Term Rate Conversion Date; and

(v) On or before the Conversion Date, a Favorable Opinion of Bond Counsel shall have been delivered to the Trustee.

*Section 2.08. Commercial Paper Interest Rate Periods*.

(a) *Determination of CP Interest Terms and CP Interest Term Rates*. During each Commercial Paper Interest Rate Period for a Series of Bonds, each Bond of such Series shall bear interest during each CP Interest Term for such Bond at the CP Interest Term Rate for such Bond. The CP Interest Term and the CP Interest Term Rate for each Bond need not be the same for any two Bonds of such Series, even if determined on the same date. Each of such CP Interest Terms and CP Interest Term Rates for each Bond shall be determined by the Remarketing Agent no later than the first day of each CP Interest Term. Each CP Interest Term shall be for a period of days within the range or ranges announced as possible CP Interest Terms no later than 9:30 a.m., New York City time, on the first day of each CP Interest Term by the Remarketing Agent. Each CP Interest Term for each Bond of the applicable Series shall be a period of not more than two hundred seventy (270) days, determined by the Remarketing Agent to be the period which, together with all other CP Interest Terms for all Bonds of the applicable Series then Outstanding, will result in the lowest overall interest expense on such Bonds over the next succeeding two hundred seventy (270) days. Each CP Interest Term shall end on either a day which immediately precedes a Business Day or on the day immediately preceding the Final Maturity Date for the applicable Series of Bonds. If, for any reason, a CP Interest Term for any Bond cannot be so determined by the Remarketing Agent, or if the determination of such CP Interest Term is held by a court of law to be invalid or unenforceable, then such

CP Interest Term shall be thirty (30) days, but if the last day so determined shall not be a day immediately preceding a Business Day, such CP Interest Term shall end on the first day immediately preceding the Business Day next succeeding such last day, or if such last day would be after the day immediately preceding the Final Maturity Date for the applicable Series of Bonds, shall end on the day immediately preceding such Final Maturity Date. In determining the number of days in each CP Interest Term, the Remarketing Agent shall take into account the following factors: (i) existing short-term, tax-exempt market rates and indices of such short-term rates; (ii) the existing market supply and demand for short-term tax-exempt securities; (iii) existing yield curves for short-term and long-term tax-exempt securities for obligations of credit quality comparable to the Bonds of the applicable Series; (iv) general economic conditions; (v) industry economic and financial conditions that may affect or be relevant to the Bonds of the applicable Series; (vi) the CP Interest Terms of other Bonds of the applicable Series; and (vii) such other facts, circumstances and conditions pertaining to financial markets as the Remarketing Agent, in its sole discretion, shall determine to be relevant.

The CP Interest Term Rate for each CP Interest Term for each Bond in a Commercial Paper Interest Rate Period shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if borne by such Bond, would enable the Remarketing Agent to sell such Bond on the effective date of such rate at a price equal to the principal amount thereof. Subject to the provisions of Section 2.10(d), if, for any reason, a CP Interest Term Rate for any Bond in a Commercial Paper Interest Rate Period is not so established by the Remarketing Agent for any CP Interest Term, or if such CP Interest Term Rate is determined by a court of law to be invalid or unenforceable, then the CP Interest Term Rate for such CP Interest Term shall be a rate per annum equal to the SIFMA Index on the first day of such CP Interest Term.

(b) *Conversion to Commercial Paper Interest Rate Period*. Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at CP Interest Term Rates. Such Written Direction of the Issuer shall specify (i) the proposed effective date of the Commercial Paper Interest Rate Period, which shall be a Business Day not earlier than the thirtieth (30th) day following the second Business Day after receipt by the Trustee of such direction, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture. In addition, the Written Direction of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the effective date of the Conversion to the Commercial Paper Interest Rate Period and a form of the notice to be mailed by the Trustee pursuant to Section 2.08(c). Upon Conversion of any Series of Bonds to the Commercial Paper Interest Rate Period and until the day immediately preceding the effective date of the next succeeding Interest Rate Period under the terms of this Indenture, each Bond of such Series shall bear interest at a CP Interest Term Rate applicable to the CP Interest Term

then in effect for such Bond, which may differ from the CP Interest Term Rate and CP Interest Term applicable to other Bonds of such Series.

(c) *Notice of Conversion to CP Interest Term Rates*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Commercial Paper Interest Rate Period as provided in Section 2.08(b), the Trustee shall give notice by first class mail of the Conversion of such Bonds to bear interest in a Commercial Paper Interest Rate Period to the Owners of the Bonds of the applicable Series not less than thirty (30) days prior to the proposed effective date of such Commercial Paper Interest Rate Period. Such notice shall state: (i) that such Bonds shall bear interest at CP Interest Term Rates unless (A) the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the applicable Conversion Date; (ii) the proposed Conversion Date to the Commercial Paper Interest Rate Period; and (iii) that Bonds of such Bonds are subject to mandatory tender for purchase on such proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to a Commercial Paper Interest Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

(d) *Conversion From Commercial Paper Interest Rate Period*. Subject to Section 2.10(b), at any time during a Commercial Paper Interest Rate Period for a Series of Bonds, the Issuer may elect, pursuant to Section 2.05(b), Section 2.06(b), Section 2.07(b) or Section 2.09(c), that such Bonds no longer shall bear interest at CP Interest Term Rates and shall instead bear interest at a Daily Interest Rate, a Weekly Interest Rate, a Term Rate or an Index Rate, as specified in such election. In connection with any such election, and notwithstanding any provision contained in this Section 2.08 to the contrary, each CP Interest Term established by the Remarketing Agent for the Bonds shall end on the same date in order to facilitate the Conversion of such Bonds. The date on which all CP Interest Terms determined for the Bonds end shall be the last day of the then current Commercial Paper Interest Rate Period and the day next succeeding such date shall be the effective date of the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period or Index Rate Period elected by the Issuer for such Bonds.

*Section 2.09. Index Rate Periods*.

(a) *Determination of Applicable Spread and Applicable Factor*. In connection with the issuance of a Series of Bonds bearing interest in an Index Rate Period, the Applicable Spread and any Applicable Factor applicable to such Series of Bonds for the duration of the initial Index Rate Period for such Series of Bonds shall be specified in this Indenture or in the Supplemental Indenture providing for the issuance of such Series of Bonds. In connection with the Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, the Remarketing Agent shall determine the Applicable Spread and any Applicable Factor applicable to such Bonds for the duration of the applicable Index Rate Period, and shall specify such Applicable Spread and any Applicable Factor selected by the Issuer in the Index Rate Determination Certificate for the applicable Index Rate

Period. The Applicable Spread and any Applicable Factor shall be such amount as shall result in the minimum Index Rate (as a rate of interest per annum) which, if borne by the Bonds of the applicable Series as of the first day of the applicable Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds on the first day of the applicable Index Rate Period at a price (without regard to accrued interest) equal to 100% of the principal amount thereof.

(b) *Determination of Index Rate*.

(i) During each Index Rate Period for a Series of Bonds, such Bonds shall bear interest at an Index Rate, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such Interest Rate Period. One Business Day prior to the Initial Issue Date of the Series 2022A-2 Bonds, the [SIFMA][SOFR] Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date.

(ii) With respect to each SIFMA Index Rate Period, (A) the Calculation Agent shall determine the SIFMA Index by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day, the Business Day immediately succeeding such Wednesday, and (B) the SIFMA Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date.

(iii) With respect to each SOFR Index Rate Period, the Calculation Agent shall (A) determine and provide to the Trustee by Electronic Means the SOFR Index by 4:00 p.m., New York City time, on each SOFR Publish Date, and (B) determine and provide to the Trustee by Electronic Means the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date.

(iv) During any Index Rate Period, interest shall be computed on the basis of a 365/366-day year and actual days elapsed. The Calculation Agent shall calculate and provide by Electronic Means to the Issuer and the Trustee the amount of interest due and payable on each Series of Bonds bearing interest at an Index Rate at least one Business Day prior to each Interest Payment Date, which in the case of a Series of Bonds bearing interest at the SOFR Index Rate shall be the SOFR Interest Calculation Date. The amount of interest due on a Series of Bonds bearing interest at the SIFMA Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the calendar month immediately preceding such Interest Payment Date. The amount of interest due on a Series of Bonds bearing interest at the SOFR Index Rate on any Interest Payment Date shall be calculated on the basis of the actual number of days in the SOFR Accrual Period immediately preceding such Interest Payment Date. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in an Index Rate Period will be rounded, 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).

(v) In determining the interest rate that any Bond shall bear as provided in this Section 2.09, neither the Underwriter nor the Remarketing Agent, as applicable, the Calculation Agent, nor the Trustee shall have any liability to the Issuer or the Holder of such Bond, except for its own negligence or willful misconduct.

(vi) If, during any Index Rate Period, the Index or rate used to determine an Index Rate is not reported by the relevant source at the time necessary for determination of such Index Rate or otherwise ceases to be available, the Issuer or its independent financial advisor (as applicable) shall determine a replacement or substitute Index Rate (as applicable), including any alternative rate and any adjustments, and promptly provide the same via Electronic Means to the Calculation Agent and the Trustee, together with the effective date of the substitute or replacement Index Rate, which substitute or replacement must be consistent with any corresponding substitute or replacement index designated pursuant to the relevant Interest Rate Swap.

(c) *Conversion to or Continuation of Index Rate Period.* Subject to Section 2.10, at any time, the Issuer, in a Written Direction of the Issuer delivered to the Trustee and the Remarketing Agent (if any), may elect that a Series of Bonds shall bear interest at an Index Rate. Such direction of the Issuer shall specify the proposed effective date of the Index Rate Period, which date shall be a Business Day not earlier than the 30th day following the second Business Day after receipt by the Trustee of the Written Direction of the Issuer, and either (A) in the case of a Conversion from a Commercial Paper Interest Rate Period, an Index Rate Period or a Term Rate Period, the day immediately following the last day of such Interest Rate Period, or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture; (ii) the last day of such Index Rate Period, which day shall be either the day immediately prior to the Final Maturity Date for the applicable Series of Bonds, or a day which immediately precedes a Business Day. In addition, such direction of the Issuer shall be accompanied by the form of a Favorable Opinion of Bond Counsel proposed to be delivered on the Conversion Date and a form of the notice to be mailed by the Trustee pursuant to Section 2.09(d).

(d) *Notice of Conversion to or Continuation of Index Rate*. Following timely receipt of a Written Direction of the Issuer directing the Conversion of a Series of Bonds to the Index Rate Period as provided in Section 2.09(b), the Trustee shall give notice by first-class mail of the Conversion of such Bonds to bear interest in a (or the establishment of another) Index Rate Period for a Series of Bonds to the Owners of the Bonds of such Series not less than thirty (30) days prior to the proposed effective date of such Index Rate Period. Such notice shall state: (i) that the Interest Rate Period for such Bonds shall be converted to, or continue to be, an Index Rate Period unless (A) the Issuer rescinds its

election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate Period as provided in Section 2.10(b) or (B) Bond Counsel shall fail to deliver a Favorable Opinion of Bond Counsel as to such Conversion on the Index Rate Conversion Date; (ii) that such Bonds are subject to mandatory tender for purchase on the Index Rate Conversion Date and setting forth the applicable Purchase Price and the place of delivery for purchase of such Bonds; and (iii) that the Bonds of such Series are subject to mandatory tender for purchase on the proposed Conversion Date unless the Issuer rescinds its election to convert the Interest Rate Period for the Bonds of such Series to an Index Rate Period as provided in Section 2.10(b); and (iv) the applicable Purchase Price and the place of delivery for purchase of such Bonds.

*Section 2.10. Notice of Conversion*. (a) In the event that the Issuer shall elect to convert the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period, a Term Rate Period, an Index Rate Period or a Commercial Paper Interest Rate Period as provided in this Article II, then the Written Direction of the Issuer required to be delivered to the Trustee by the applicable provision of this Article II shall be given by registered or certified mail, or by Electronic Means.

(b) Notwithstanding anything in this Article II, in connection with any Conversion of the Interest Rate Period for a Series of Bonds, the Issuer shall have the right to deliver to the Trustee and the Remarketing Agent (if any), on or prior to 10:00 a.m., New York City time, on the third Business Day preceding the effective date of any such Conversion a Written Direction of the Issuer to the effect that the Issuer elects to rescind its election to make such Conversion. If the Issuer rescinds its election to make such Conversion, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue to bear interest in the Daily Interest Rate Period, Weekly Interest Rate Period, Term Rate Period, Commercial Paper Interest Rate Period or Index Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion, and the Term Rate Tender Date or Index Rate Tender Date, if applicable, for any such Series of Bonds shall also remain unchanged from that in effect immediately prior to such proposed Conversion.

(c) No Conversion of a Series of Bonds from one Interest Rate Period to another, and no continuation or establishment of a new Term Rate Period or Index Rate Period, shall take effect under this Indenture unless each of the following conditions, to the extent applicable, shall have been satisfied:

(i) the Trustee shall have received a Favorable Opinion of Bond Counsel with respect to such Conversion;

(ii) with respect to any Series of Bonds bearing interest at an Index Rate or a Term Rate, no Conversion may occur with respect to such Bonds earlier than (A) the Business Day following the last day of the applicable Interest Rate Period or (B) a day on which all of the Outstanding Bonds of such Series are subject to optional redemption pursuant to Section 4.03(b) or an applicable Supplemental Indenture;

(iii) in the case of any Conversion of the Interest Rate Period for a Series of Bonds to a Daily Interest Rate Period, a Weekly Interest Rate Period or a Commercial Paper Interest Rate Period, prior to the Conversion Date the Issuer shall have appointed a Remarketing Agent and shall have executed and delivered a Remarketing Agreement with respect to such Series of Bonds, and shall have obtained a Liquidity Facility with respect to such Series of Bonds as required by Section 2.11;

(iv) in the case of a Conversion of the Interest Rate Period for a Series of Bonds to an Index Rate Period, prior to the Conversion Date the Issuer shall have appointed a Calculation Agent and executed and delivered a Calculation Agent Agreement with respect to such Series of Bonds; and

(v) the remarketing proceeds available on the Conversion Date shall not be less than the amount required to purchase all of the Bonds of such Series at the applicable Purchase Price (unless the Issuer in its sole discretion elects to transfer to the Trustee the amount of such deficiency on or before the Conversion Date).

(d) If any condition to the Conversion of the Interest Rate Period for a Series of Bonds shall not have been satisfied, then the Interest Rate Period shall not be converted and the Bonds of the applicable Series shall continue in the Daily Interest Rate Period, Weekly Interest Rate Period, Index Rate Period, Term Rate Period, or Commercial Paper Interest Rate Period, as the case may be, as in effect immediately prior to such proposed Conversion (provided, that the period of any such continuing Term Rate Period shall be one year), and the Bonds of such Series shall continue to be subject to mandatory tender for purchase on the date which would have been the effective date of the Conversion as provided in Section 4.14.

*Section 2.11. Liquidity Facility*. In connection with the issuance of any Series of Bonds, or the Conversion of any Series of Bonds, to bear interest in a Daily Interest Rate Period, a Weekly Interest Rate Period, an Index Rate Period or a Commercial Paper Interest Rate Period, the Issuer shall obtain a Liquidity Facility for such Series of Bonds, and the Issuer may elect to obtain a Liquidity Facility for any Series of Bonds bearing interest in a Term Rate Period or an Index Rate Period. Provisions concerning any Liquidity Facility so obtained with respect to such Series of Bonds shall be set forth in a Supplemental Indenture.

*Section 2.12. Provisions Regarding Commodity Swap*. (a) In connection with the Clean Energy Project, the Issuer shall enter into the initial Commodity Swap with the Commodity Swap Counterparty. The following shall apply to such Commodity Swap:

(i) The method for the calculation of the Commodity Swap Payments and Commodity Swap Receipts, as applicable, and the scheduled payment dates therefor, are set forth in Schedule III hereto.

(ii) Commodity Swap Payments shall be made by the Trustee (for the account of the Issuer) from the Commodity Swap Payment Fund.

(iii) Commodity Swap Receipts shall be payable directly to the Trustee (for the account of the Issuer) and shall be deposited directly into the Revenue Fund.

(b) The following shall apply with respect to restrictions on replacement and termination of the Commodity Swap:

(i) Except as provided in clause (iii) below, the Issuer agrees that it will not exercise any right to declare an early termination date under the Commodity Swap unless either (A) the Issuer has entered into a replacement Commodity Swap in accordance with clause (ii) or (iii) below, and such replacement Commodity Swap will be effective as of such early termination date and cover price exposure from and after such early termination date, or (B) the Issuer causes or permits the termination of the Energy Purchase Agreement prior to or as of such early termination date.

(ii) The Issuer may replace the Commodity Swap (and any related guaranty of the Commodity Swap Counterparty's obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty at any time upon delivery to the Trustee of a Rating Confirmation.

(iii) If the Commodity Swap is subject to termination (or, in the case of clause (B) below, is terminated) by either party in accordance with its terms, then (A) the Issuer may, subject to clause (i) above, terminate the Commodity Swap if the Issuer has the right to do so, and (B) the Issuer may enter into a replacement Commodity Swap with an alternate Commodity Swap Counterparty without Rating Confirmation, but only if the replacement Commodity Swap is identical in all material respects to the existing Commodity Swap, except for the identity of the Commodity Swap Counterparty, and (1) the replacement Commodity Swap Counterparty (or its credit support provider under the Commodity Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) the rating then assigned by each Rating Agency to the Bonds, or (2) the Commodity Swap Counterparty provides such collateral and security arrangements as the Issuer shall determine to be necessary, and (3) in either case, the replacement Commodity Swap Counterparty enters into a replacement Energy Supplier Custodial Agreement with the Energy Supplier and the Custodian that is identical in all material respects to the existing Energy Supplier Custodial Agreement.

(c) The following shall apply with respect to the mandatory termination of the Commodity Swap and Energy Purchase Agreement:

(i) Upon the occurrence of a Commodity Swap Mandatory Termination Event, the Issuer shall (A) notify the Energy Supplier of such event pursuant to Section 17.5(a) of the Energy Purchase Agreement, and (B) in accordance with Section 17.5(a) of the Energy Purchase Agreement, use its good faith efforts to replace the Commodity Swap with an alternate Commodity Swap, subject to the conditions of subsection (b)(ii) above, during the 120 day replacement period contemplated by Section 17.5(a) of the Energy Purchase Agreement or any period that the Custodian, under the terms of the Custodial Agreements,

is making payments (an *"Alternate Replacement Period"*), *provided* that any such Alternate Replacement Period shall end on the earlier of the date on which the Custodian ceases making payments under the Custodial Agreements and the date of the sixth consecutive monthly payment by the Custodian.

(ii) If the Issuer is unable to enter into an alternate Commodity Swap pursuant to clause (i)(B) above during such 120-day replacement period or Alternate Replacement Period, as applicable, the Issuer shall (A) designate an Early Termination Date for the Energy Purchase Agreement in accordance with Section 17.4(b) of the Energy Purchase Agreement, with such Early Termination Date occurring immediately at the end of such replacement period, and (B) unless the Commodity Swap has been terminated automatically pursuant to Section 6(a) thereof, designate an early termination date for the Commodity Swap pursuant to Section 6(a) thereof with such early termination date occurring concurrently with the Early Termination Date under the Energy Purchase Agreement described in clause (A) above.

(iii) A *"Commodity Swap Mandatory Termination Event"* occurs if the Commodity Swap becomes terminable by the Issuer pursuant to Part 1(h)(ii) (failure to pay after cure period) of the Schedule to the Commodity Swap.

*Section 2.13. Provisions Regarding Interest Rate Swap*. (a) In connection with the issuance of any Variable Rate Series of Bonds, or the Conversion of any Series of Bonds, to bear interest in a Daily Interest Rate Period, a Weekly Interest Rate Period, an Index Rate Period or a Commercial Paper Interest Rate Period, the Issuer shall enter into an Interest Rate Swap with an Interest Rate Swap Counterparty. The following shall apply to the Interest Rate Swap:

(i) The method for the calculation of the Interest Rate Swap Payments and Interest Rate Swap Receipts, as applicable, and the scheduled payment dates therefor are set forth in the Interest Rate Swap;

(ii) Interest Rate Swap Payments shall be made by the Trustee (for the account of the Issuer) from the Debt Service Account on parity with principal and interest payments on Bonds; and

(iii) Interest Rate Swap Receipts shall be payable directly to the Trustee (for the account of the Issuer) and shall be deposited directly into the Debt Service Account.

(b) The following shall apply with respect to restrictions on replacement and termination of the Interest Rate Swap:

(i) The Issuer agrees that it will not exercise any right to declare an early termination date under the Interest Rate Swap unless either (A) the Issuer has entered into a replacement Interest Rate Swap in accordance with clause (ii) and (iii) below, and such replacement Interest Rate Swap will be effective as of such early termination date and cover interest rate exposure from and after such early termination date, or (B) in all other

cases, the Energy Purchase Agreement will terminate prior to or as of such early termination date.

(ii) The Issuer may replace the Interest Rate Swap (and any related guaranty of the Interest Rate Swap Counterparty's obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Interest Rate Swap Counterparty at any time upon delivery to the Trustee of a Rating Confirmation.

(iii) If the Interest Rate Swap is subject to termination (or, in the case of clause (B) below, is terminated) by either party in accordance with its terms, then (A) the Issuer may, subject to clause (i) above, terminate the Interest Rate Swap if the Issuer has the right to do so, and (B) the Issuer may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without Rating Confirmation, but only if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap, except for the identity of the Interest Rate Swap Counterparty, and (1) the alternate Interest Rate Swap Counterparty (or its credit support provider under the Interest Rate Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) at least as highly as the rating then assigned by each Rating Agency to the Bonds, or (2) the Interest Rate Swap Counterparty provides such collateral and security arrangements as the Issuer shall determine to be necessary.

*Section 2.14. CPI Index Rate Periods*. The provisions of this Section 2.14 shall apply to Index Rate Bonds bearing interest in a CPI Index Rate Period.

(a) *Determination of Applicable Spread*. In connection with the issuance of a Series of Bonds bearing interest at a CPI Index Rate, or the Conversion of the Interest Rate Period for a Series of Bonds to a CPI Index Rate Period, the Underwriter or Remarketing Agent, as applicable, shall determine the Applicable Spread for such Bonds for the duration of the applicable CPI Index Rate Period, and such Applicable Spread shall be specified in the Supplemental Indenture or Index Rate Determination Certificate for the applicable CPI Index Rate Period. The Applicable Spread for a CPI Index Rate Period shall be such amount as shall result in the minimum interest rate(s) which, if borne by the Bonds of the applicable Series as of the first day of the applicable CPI Index Rate Period, under Prevailing Market Conditions, would enable the Underwriter or the Remarketing Agent, as applicable, to sell the Bonds at a price equal to 100% of the aggregate principal amount of such Bonds on the first day of the applicable CPI Index Rate Period.

(b) *Determination of CPI Index Rate.*

(i) During any CPI Index Rate Period for a Series of Bonds, such Bonds shall bear interest at the CPI Index Rate, determined using the CPI Index Rate Formula and the Applicable Spread, as specified in the applicable Index Rate Determination Certificate delivered to the Trustee on the first day of such CPI Index Rate Period.

(ii) The Calculation Agent shall by noon, New York time, on each CPI Index Rate Reset Date (or, if such CPI Index Rate Reset Date is not a Business Day, on the next succeeding Business Day) determine the CPI Index Rate for the CPI Interest Rate Period that begins on such CPI Index Rate Reset Date. The Calculation Agent shall also calculate and provide to the Issuer and the Trustee the amount of interest due and payable on each Interest Payment Date for the applicable Series of Bonds at least two Business Days prior to such Interest Payment Date. The Calculation Agent shall furnish each CPI Index Rate so determined to the Issuer and the Trustee by Electronic Means not later than each CPI Index Rate Reset Date. Upon the written request of any Holder, the Trustee shall confirm the CPI Index Rate then in effect. All percentages resulting from any step in the calculation of interest on a Series of Bonds while in a CPI Index Rate Period will be rounded, if necessary, to the nearest hundred thousandth of a percentage point (*i.e.,* to five decimal places) with five millionths of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on such Bonds while in an Index Rate Period will be rounded to the nearest cent (with one-half cent being rounded upward).

(iii) During any CPI Index Rate Period, interest shall be computed on the basis of a 360-day year of twelve 30 day calendar months.

(iv) In determining the interest rate that any Bond shall bear as provided in this Section 2.14, neither the Underwriter nor the Remarketing Agent, as applicable, the Calculation Agent, nor the Trustee shall have any liability to the Issuer or the Holder of such Bond, except for its negligence or willful misconduct.

(v) If the CPI is not reported on Bloomberg CPURNSA for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, but the CPI has otherwise been published by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate. If the CPI is not published by the BLS for a particular month by 11:00 a.m. on a CPI Index Rate Reset Date, the Calculation Agent will determine the CPI with reference to an index number based on the last twelve-month change in the CPI available and announced by the Department of the Treasury for its Inflation-Indexed Securities as described at 62 Federal Register 846-874 (January 6, 1997) (the *"Treasury Inflation-Indexed Securities Regulation"*) or, if no such index number is announced, in accordance with general market practice at the time.

(vi) In calculating 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 the Issuer has given notice with respect to the Conversion of the Bonds to an Interest Rate Period other than the CPI Index Rate Period, the Issuer may establish a new CPI Index Rate Period and a new CPI Index Rate for the Bonds with such right to be exercised by delivery of an Index Rate Continuation Notice to the Trustee no less than 30 days prior to the effective date of the new CPI Index Rate Period. The CPI Index Rate Continuation Notice shall be accompanied by a letter of Bond Counsel to the effect that Bond Counsel expects to be able to deliver a Favorable Opinion of Bond Counsel on the effective date of the new CPI Index Rate Period.

(ii) Any establishment of a new CPI Index Rate and CPI Index Rate Period for a Series of Bonds pursuant to paragraph (i) above must comply with the following conditions:

(A) the first day of such new CPI Index Rate Period must be a Mandatory Purchase Date for such Bonds pursuant to the provisions of Section 4.13, and such Bonds shall be required to be tendered for purchase on such date;

(B) the first day of such new CPI Index Rate Period must be a Business Day; and

(C) no new CPI Index Rate shall become effective unless (x) the Favorable Opinion of Bond Counsel referred to in paragraph (i) above is delivered on the first day of the new CPI Index Rate Period and (y) there is no Failed Remarketing on the Mandatory Purchase Date on which such new CPI Index Rate Period is to become effective.

(iii) Upon receipt by the Trustee of a CPI Index Rate Continuation Notice from an Authorized Officer, as soon as practicable, but in any event not less than 10 Business Days prior to the first day of the proposed CPI Index Rate Period, the Issuer (or any dissemination agent appointed by the Issuer) shall give notice by first class mail or by Electronic Means via EMMA to the Holders of the Bonds of the applicable Series, which notice shall state in substance:

(A) that a new CPI Index Rate Period and CPI Index Rate is to be established for such Bonds and the proposed effective date of such new CPI Index Rate Period (which date shall be the Mandatory Purchase Date for such Bonds pursuant to Section 4.13), and that such new CPI Index Rate

Period and CPI Index Rate will become effective on such date if the conditions specified in this Section 2.14 are satisfied on or before such date;

(B) that all Bonds of the applicable Series are subject to mandatory tender for purchase on the applicable Mandatory Purchase Date pursuant to Section 4.13 (whether or not the proposed new CPI Index Rate Period becomes effective on such date) at the Purchase Price, which shall be specified therein;

(C) the first day of the new CPI Index Rate Period;

(D) that the new CPI Index Rate Period and CPI Index Rate for the Bonds shall not be established unless a Favorable Opinion of Bond Counsel is delivered to the Trustee on the first day of the new CPI Index Rate Period and no Failed Remarketing occurs on such date;

(E) the CUSIP numbers or other identification information of the Bonds of the applicable Series; and

(F) that, to the extent that there shall be on deposit with the Trustee on the first day of the new CPI Index Rate Period an amount of money sufficient to pay the Purchase Price thereof, all the Bonds not delivered to the Trustee on or prior to such date shall be deemed to have been properly tendered for purchase and shall cease to constitute or represent a right on behalf of the Holder thereof to the payment of principal thereof or interest thereon and shall represent and constitute only the right to payment of the Purchase Price on deposit with the Trustee, without interest accruing thereon after such date.

(d) *End of CPI Index Rate Period*. In the event the Issuer has not given a CPI Index Rate Continuation Notice or other Written Notice with respect to the Conversion of Bonds to an Interest Rate Period other than a CPI Index Rate Period, in either case at the time required by this Indenture, or if the conditions to the effectiveness of a new CPI Index Rate Period and new CPI Index Rate set forth above are not satisfied, including as a result of the Remarketing Agent's failure to establish a CPI Index Rate as herein provided, then the Bonds of the applicable Series shall be purchased on the applicable Mandatory Purchase Date pursuant to Section 4.13 and a Failed Remarketing shall be deemed to have occurred and the Bonds shall not be remarketed.

## ARTICLE III

## GENERAL TERMS AND PROVISIONS OF BONDS

*Section 3.01. Medium of Payment; Form and Date; Letters and Numbers*. (a) The Bonds shall be payable, with respect to interest, principal and Redemption Price, in any coin or currency

of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(b) The Bonds may be issued only in the form of fully registered Bonds without coupons, in Authorized Denominations. The Bonds shall be in substantially the form set forth in *Exhibit A* hereto, and may be printed, engraved, typewritten or otherwise produced.

(c) Unless the Issuer shall otherwise direct, the Bonds shall be numbered from one upward, with a separate designation for each Series.

*Section 3.02. Legends*. The Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the Issuer prior to the authentication and delivery thereof.

*Section 3.03. Execution and Authentication*. (a) The parties agree that the Electronic Signature of a party to this Indenture, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. The parties agree that any Electronically Signed document (including this Indenture) shall be deemed (i) to be "written" or "be in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "Electronic Signature" or "Electronically Signed" means a manually signed original signature that is then transmitted by Electronic Means and containing, or to which there is affixed, an Electronic Signature.

(b) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chair or any other Authorized Officer of the Issuer, and attested by the manual or facsimile signature of the Secretary of the Issuer or any other Authorized Officer. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated and delivered by the Trustee, such Bonds may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the Persons who signed such Bonds had not ceased to hold such offices. Any Bond may be signed on behalf of the Issuer by such Persons as at the time of the execution of such Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date borne by the Bonds such Persons may not have been so authorized or have held such office.

(c) The Bonds shall bear thereon a certificate of authentication, in the form set forth in *Exhibit A* hereto, executed manually by the Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Indenture, and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Indenture and that the Holder thereof is entitled to the benefits of this Indenture.

(d) The parties agree that the Electronic Signature of a party to this Indenture, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. The parties agree that any Electronically Signed Document (including this Indenture) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "Electronic Signature" means a manually signed original signature that is then transmitted by Electronic Means; "transmitted by Electronic Means" means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, "Electronically Signed Document" means a document transmitted by Electronic Means and containing, or to which there is affixed, an Electronic Signature. Paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of Electronically Signed Documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

*Section 3.04. Exchange, Transfer and Registry*. (a) The Bonds shall be registered and transferred only upon the books of the Issuer, which shall be held and controlled by the Bond Registrar and kept for such purposes at the designated corporate trust office of the Bond Registrar, and may be transferred by the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney and in compliance with the applicable terms of this Indenture. The transferor shall also provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Upon the registration of transfer of any Bond, the Issuer shall issue in the name of the transferee a new Bond or Bonds of the same Series, aggregate principal amount and maturity as the surrendered Bond.

(b) The registered owner of any Bond or Bonds of one or more denominations shall have the right to exchange such Bond or Bonds for a new Bond or Bonds of any denomination then authorized for such Bond or Bonds of the same Series, aggregate principal amount and maturity of the surrendered Bond or Bonds. Such Bond or Bonds shall be exchanged by the Issuer for a new Bond or Bonds upon the request of the registered owner thereof in person or by its attorney duly authorized in writing, upon surrender of such Bond or Bonds together with a written instrument requesting such exchange, in form satisfactory to the Bond Registrar duly executed by the registered owner or its duly authorized attorney.

(c) The Issuer and each Fiduciary may deem and treat the Person in whose name any Bond shall be registered upon the Bond registration books maintained by the Bond Registrar as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of

receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon its order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor any Fiduciary shall be affected by any notice to the contrary.

*Section 3.05. Regulations With Respect to Exchanges and Registration of Transfers*. In all cases in which the privilege of exchanging or registering the transfer of Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchanges or registration of transfer shall forthwith be delivered to the Trustee and cancelled or retained by the Trustee. Prior to every such exchange or registration of transfer of Bonds, whether temporary or definitive, the Issuer or the Bond Registrar may require the Holder to pay an amount sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. Every applicable person that transfers Bonds in any such exchange or transfer shall also timely provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligation, including without limitation any cost-basis reporting obligations under section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. Unless otherwise provided in a Supplemental Indenture, neither the Issuer nor the Bond Registrar shall be required (a) to register the transfer or exchange of Bonds for the period next preceding any Interest Payment Date for the Bonds, beginning with the Regular Record Date for such Interest Payment Date and ending on such Interest Payment Date, or for the period next preceding any date for the proposed payment of Defaulted Interest with respect to such Bonds beginning with the Special Record Date for the date of such proposed payment and ending on the date of such proposed payment, (b) to register the transfer or exchange of Bonds for a period beginning 15 days before the mailing of any notice of redemption of such Bonds and ending on the day of such mailing, or (c) to register the transfer or exchange of any Bonds called for redemption. Every Person that transfers Bonds shall timely provide or cause to be timely provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

*Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost*. If any Bond becomes mutilated or is lost, stolen or destroyed, the Issuer may execute and the Trustee shall authenticate and deliver a new Bond of like Series, date of issue, maturity date, principal amount and interest rate per annum as the Bond so mutilated, lost, stolen or destroyed, *provided* that (a) in the case of such mutilated Bond, such Bond is first surrendered to the Trustee, (b) in the case of any such lost, stolen or destroyed Bond, there is first furnished evidence of such loss, theft or destruction in form satisfactory to the Trustee together with indemnity satisfactory to the Trustee, (c) all other reasonable requirements of the Issuer and the Trustee are complied with, and (d) expenses in connection with such transaction are paid by the Holder. Any Bond surrendered for registration or transfer shall be cancelled. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual

obligations on the part of the Issuer, whether or not the Bonds so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued under this Indenture, in any moneys or securities held by the Issuer or any Fiduciary for the benefit of the Bondholders.

*Section 3.07. Temporary Bonds*. (a) Until the definitive Bonds are prepared, the Issuer may execute, in the same manner as is provided in Section 3.03, and upon the request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer at its own expense shall prepare and execute and, upon the surrender of such temporary Bonds for exchange and the cancellation of such surrendered temporary Bonds, the Trustee shall authenticate and, without service charge to the Holder thereof (except a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto), deliver in exchange therefor, definitive Bonds of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds authenticated and issued pursuant to this Indenture.

(b) All temporary Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Trustee.

*Section 3.08. Payment of Interest on Bonds; Interest Rights Preserved*. Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Bond is registered at the close of business on the Regular Record Date.

Any interest on any Bond which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (hereinafter, *"Defaulted Interest"*) shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by the Issuer to the Persons in whose names the Bonds are registered at the close of business on a date (hereinafter, the *"Special Record Date"*) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time the Issuer shall deposit with the Paying Agents an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to and approved in writing by the Paying Agents for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Section provided. Thereupon the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days or less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the written notice of the proposed payment. The Bond Registrar shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date

therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration or transfer of or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

*Section 3.09. Book Entry System; Appointment of Securities Depository*. All Bonds shall be registered in the name of Cede & Co., as nominee for DTC, as Securities Depository, and held in the custody or for the account of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of Bonds, and the Beneficial Owners will not receive physical delivery of Bond certificates except as provided in this Indenture. For so long as the Securities Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership interests will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership of Bonds is to receive, hold or deliver any Bond certificate. In connection with any proposed transfer outside the Book Entry System, the Issuer or the Securities Depository shall provide, or cause to be provided, to the Trustee all information reasonably required by the Trustee to allow it to comply with any applicable federal, state or local tax reporting obligations, including, without limitation, any cost-basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on such information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

The Issuer may, with Written Notice to the Trustee but without the consent of any Bondholders, appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book Entry System for the Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The Issuer and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book Entry System with respect to the Bonds, and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of the Bonds beneficially owned by the Beneficial Owners.

Whenever, during the term of the Bonds, the Beneficial Ownership of any Series thereof is determined by a book entry at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring such Bonds shall be deemed modified to require the appropriate Person to meet the requirements of the Securities Depository as to registering or transferring the book entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Bonds shall, while such Bonds are in such Book Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law. Notwithstanding the foregoing, the Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any security (including any transfers between or among Securities Depository Participants or Beneficial Owners) other than to require delivery of

such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Except as otherwise specifically provided herein with respect to the rights of Participants and Beneficial Owners, when a Book Entry System is in effect, the Issuer and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal, Redemption Price or Purchase Price of and interest on such Bonds or portion thereof to be redeemed or purchased, of giving any notice permitted or required to be given to the Bondholders under this Indenture and of voting, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the Issuer nor the Trustee will have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other Person which is not shown on the bond register, with respect to (a) the accuracy of any records maintained by the Securities Depository or any Participant; (b) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount, Redemption Price or Purchase Price of, or interest on, any Bonds; (c) the delivery of any notice by the Securities Depository or any Participant; (d) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of any of the Bonds; or (e) any other action taken by the Securities Depository or any Participant. The Trustee shall pay all principal or Redemption Price of and interest on the Bonds registered in the name of Cede only to or "upon the order of" the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in the State and New York), and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal, Redemption Price or purchase price of and interest on such Bonds to the extent of the sum or sums so paid.

The Book Entry System may be discontinued by the Trustee and the Issuer, at the Written Direction and expense of the Issuer, and the Issuer and the Trustee will cause the delivery of Bond certificates to such Beneficial Owners of the Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to any Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving 30 days' written notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(ii) The Issuer determines, with written notice to the Trustee, not to continue the Book Entry System through a Securities Depository for the Bonds.

When the Book Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

In connection with any proposed transfer outside the Book Entry System of the Securities Depository, the Securities Depository and the Issuer shall provide or cause to be provided to the

Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation cost-basis reporting obligations under Section 6045 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

*Section 3.10. Subsidy Payments*. In the event that one or more Series of Bonds are issued which qualify the Issuer to receive Subsidy Payments and the Issuer, in a Supplemental Indenture, pledges such Subsidy Payments to the repayment of the principal of, and interest on, the Bonds, then, to the extent such Subsidy Payments are received by the Trustee, they shall constitute Revenues under the Indenture.

*Section 3.11. Limitation of Liability of the Issuer*. Notwithstanding anything to the contrary herein or in the Bonds, all obligations of the Issuer to make payments of any kind pursuant to this Indenture are special, limited obligations of the Issuer, payable solely from, and secured solely by, the Trust Estate as and to the extent provided herein. The Issuer shall not be required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Neither the faith and credit of the Issuer nor the taxing power of the State or any political subdivision thereof is pledged to payments pursuant to this Indenture or the Bonds. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Indenture or the Clean Energy Project, except solely to the extent Revenues are received for the payment thereof.

## ARTICLE IV

## REDEMPTION OF BONDS AND TENDER PROVISIONS

*Section 4.01. Extraordinary Redemption*. (a) The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the Month following the Early Termination Payment Date, which redemption date in the case of a Failed Remarketing will be the same day as the current Mandatory Purchase Date, at the following Redemption Prices:

(i) in the case of a Series of Bonds bearing interest in a Term Rate Period (including the Series 2022A-1 Bonds), the Amortized Value thereof, and

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

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

(b) The Issuer shall (i) provide the Trustee with Written Notice of the Early Termination Payment Date as provided in Section 7.12(b), and (ii) as of the first day of the Month prior to a

Mandatory Purchase Date, direct the Trustee to send a conditional notice of redemption pursuant to Section 4.04 in the event that a Failed Remarketing may occur.

*Section 4.02. Sinking Fund Redemption*. (a) The Series 2022A-[1] Bonds maturing on _____, 20__ bearing interest at a rate of _____% shall be subject to mandatory redemption prior to their stated maturity in part (by lot) from Sinking Fund Installments, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption on the following dates and in the following amounts:

| REDEMPTION DATE | PRINCIPAL AMOUNT | REDEMPTION DATE | PRINCIPAL AMOUNT |
|---|---|---|---|
| | $ | | $ |

20__*

* Stated Maturity

(b) The Series 2022A-[1] Bonds maturing on _____, 20__ bearing interest at a rate of _____% shall be subject to mandatory redemption prior to their stated maturity in part (by lot) from Sinking Fund Installments, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest to the date of redemption on the following dates and in the following amounts:

| REDEMPTION DATE | PRINCIPAL AMOUNT | REDEMPTION DATE | PRINCIPAL AMOUNT |
|---|---|---|---|
| | $ | | $ |

20__*

* Stated Maturity

(c) The Series 2022A-2 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 |
|---|---|---|---|
| | $ | | $ |

20__*

* Stated Maturity

*Section 4.03. Optional Redemption*. (a) The Series 2022A-1 Bonds are subject to redemption at the option of the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and by lot within a maturity) on any date prior to _____ 1, 20__ at a Redemption Price, calculated by a quotation agent selected by the Issuer, equal to the greater of:

(i) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2022A-1 Bond to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of the stated maturity date of such Series 2022A-1 Bond or the Initial Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax Exempt Municipal Bond Rate for such Series 2022A-1 Bonds minus 0.25% per annum, and

(ii) the Amortized Value thereof;

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

(b) The Series 2022A-1 Bonds maturing on or after the Initial Mandatory Purchase Date are subject to redemption at the option of the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and by lot within a maturity) on any date on or after _____ 1, 20__ at a Redemption Price selected by the Issuer, equal to the Amortized Value thereof as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2022A-1 Bonds to be redeemed), as follows:

| REDEMPTION PERIOD (BOTH DATES INCLUSIVE) | _____, 20__ MATURITY REDEMPTION PRICE | _____, 20__ (__%) MATURITY REDEMPTION PRICE | _____, 20__ (__%) MATURITY REDEMPTION PRICE |
|---|---|---|---|
| | % | % | % |

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

(c) The Series 2022A-2 Bonds are subject to optional redemption by the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity), on any day on or after the first day of the third month preceding the Initial Mandatory Purchase Date for the Series 2022A-2 Bonds, at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption. In lieu of redeeming the Series 2022A-2 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of the Issuer, use such funds as may be available by the Issuer or as are otherwise available under this Indenture to purchase such Series 2022A-2 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022A-2 Bonds. Any Series 2022A-2 Bonds so purchased may be remarketed in a new Interest Rate Period.

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

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

(f) For so long as a Series of Bonds is bearing interest in an Index Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer, in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity), on any Business Day on or after the first Business Day of the third month preceding the Index Rate Tender Date for such Series of Bonds at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(g) For so long as a Series of Bonds is bearing interest in a Daily Interest Rate Period or a Weekly Interest Rate Period, the Bonds of such Series are subject to optional redemption by the Issuer in whole or in part (in such amounts and by such maturities as may be specified by the Issuer and at random within a maturity) on any Business Day at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(h) For so long as a Series of Bonds is bearing interest in a Commercial Paper Interest Rate Period, each Bond of such Series is subject to optional redemption by the Issuer on the day succeeding the last day of any CP Interest Term for such Bond at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption.

(i) Notwithstanding anything to the contrary contained herein, in connection with the Conversion of a Series of Bonds from one Interest Rate Period to another or the establishment of a new Term Rate Period or Index Rate Period for a Series of Bonds, the Issuer may, in the Written Direction to the Trustee delivered in connection with such Conversion or establishment of a new Term Rate Period or Index Rate Period, designate additional or different terms upon which the Bonds of such Series will be subject to optional redemption during the new Interest Rate Period for such Series of Bonds if such additional or different terms of optional redemption are approved by Bond Counsel.

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

*Section 4.04. Redemption Notice*. (a) When the Trustee receives Written Notice from the Issuer of its election or direction to optionally redeem Bonds pursuant to Section 4.06, the Trustee shall give notice, in the name of the Issuer, or when redemption of Bonds is authorized or required pursuant to Section 4.01 or other than at the election or direction of the Issuer, pursuant to Section 4.07 the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bonds by first class mail, postage prepaid, to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee in writing for that purpose, as of the Regular Record Date, as follows:

(i) for any redemption of the Bonds pursuant to Section 4.01, not less than 15 days prior to the redemption date;

(ii) for redemptions of Bonds 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 2022A Bonds (A) pursuant to clause (iii) above may include a statement that, if the Series 2022A Bonds are not redeemed for any reason, the Series 2022A 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 2022A Bonds on the Initial Mandatory Purchase Date pursuant to Section 4.16, subject to the condition set forth in Section 4.16(b).

(b) In the event that the Bonds may be subject to extraordinary redemption as a result of a Failed Remarketing that could occur if the Trustee has not received the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds pursuant to this Section 4.04 may be a conditional notice of redemption, delivered in each case not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee's failure to receive, by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date and the Bonds shall be purchased pursuant to Section 4.13 or Section 4.14 hereof on such Mandatory Purchase Date rather than redeemed.

(c) Each notice of redemption shall identify the Bonds to be redeemed and shall state (i) the redemption date, (ii) the Redemption Price or the manner in which it will be calculated, (iii) that the Bonds called for redemption must be surrendered to collect the Redemption Price, (iv) the address at which the Bonds must be surrendered, and (v) that interest on the Bonds called for redemption ceases to accrue on the redemption date.

(d) With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the meaning of Section 12.01 of this Indenture, such notice shall state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of money sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such money shall not have been so received said notice shall be of no force and effect, and the Issuer shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

(e) Failure of the registered owner of any Bonds which are to be redeemed to receive any such notice, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any Bonds.

*Section 4.05. Bonds Redeemed in Part*. Upon surrender of a Bond redeemed in part, the Issuer will execute and the Trustee will authenticate and deliver to the Holder thereof a new Bond or Bonds of the same Series, maturity and tenor in Authorized Denominations equal in principal amount to the unredeemed portion of the Bond surrendered. Notwithstanding anything herein to the contrary, so long as the Bonds are held in the Book Entry System the Bonds will not be delivered as set forth above; rather transfers of Beneficial Ownership of such Bonds to the Person indicated above will be effected on the registration books of the Securities Depository pursuant to its rules and procedures.

*Section 4.06. Redemption at the Election or Direction of the Issuer*. In the case of any redemption of Bonds at the election or direction of the Issuer, the Issuer shall give Written Notice to the Trustee, at least five Business Days prior to the last date on which the Trustee is required to give notice of redemption pursuant to Section 4.04, of its election or direction so to redeem, the Series, Maturity Dates, principal amounts by Maturity Dates and CUSIP numbers of the Bonds to be redeemed, the Redemption Price or the manner in which it will be calculated for each Maturity Date of Bonds to be redeemed, and the date on which such Bonds are to be redeemed, and directing the Trustee to provide notice of such redemption to the Owners of such Bonds pursuant to Section 4.04 (maturities and principal amounts thereof to be redeemed shall be determined by the Issuer in its sole discretion). In the event notice of redemption shall have been given as in Section 4.04 provided, there shall be paid on or prior to the redemption date to the appropriate Paying Agents an amount in cash which, in addition to other moneys, if any, available therefor held by such Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, all of the Bonds to be redeemed. The Issuer shall promptly notify the Trustee in writing of all such payments by it to such Paying Agents.

*Section 4.07. Redemption Other Than at the Issuer's Election or Direction*. Whenever by the terms of this Indenture the Trustee is required or authorized to redeem Bonds other than at the election or direction of the Issuer, the Trustee shall (i) select the Bonds or portions of Bonds to be redeemed, (ii) give the notice of redemption and (iii) pay out of moneys available therefor the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article IV and, to the extent applicable, Section 5.07 and Section 5.08.

*Section 4.08. Selection of Bonds To Be Redeemed*. If less than all of the Bonds of like Series, tenor and maturity shall be called for redemption, the particular Bonds or portions of Bonds of such Series, tenor and maturity to be redeemed shall be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds of such Series, tenor and maturity not previously called for redemption; *provided, however,* that the portion of any Bond of a denomination of more than a minimum Authorized Denomination to be redeemed shall be in the principal amount of such minimum Authorized Denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as

representing that number of Bonds of a minimum Authorized Denomination which is obtained by dividing by such minimum Authorized Denomination the principal amount of such Bond to be redeemed in part.

*Section 4.09. Payment of Redeemed Bonds*. Notice having been given in the manner provided in Section 4.04 and, in the case of optional redemption of Bonds, sufficient moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on such Bonds being held by the Trustee, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the applicable Redemption Price, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price. If there shall be drawn for redemption less than all of a Bond, the Issuer shall execute and the Trustee shall authenticate and the Paying Agent shall deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bonds so surrendered, Bonds of like Series, maturity and tenor in any of the Authorized Denominations. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like maturity to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption. Upon the payment of the Redemption Price of the Bonds or portions thereof being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

*Section 4.10. Cancellation and Destruction of Bonds*. All Bonds paid or redeemed either at or before maturity shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10(c) that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee pursuant to the Written Direction of the Issuer, shall thereupon be promptly cancelled (or deemed to have been cancelled). Bonds so cancelled may, to the extent permitted by law, at any time be destroyed by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the Bonds so destroyed, and one executed certificate shall be filed with the Issuer and the other executed certificate shall be retained by the Trustee.

*Section 4.11. Optional Tender During Daily or Weekly Interest Rate Periods*. (a) During any Daily Interest Rate Period or Weekly Interest Rate Period for a Series of Bonds, any Eligible Bond of such Series shall be purchased from its Owner at the option of the Owner on any Business Day at the applicable Purchase Price, payable in immediately available funds, upon delivery to the Trustee at its designated corporate trust office for delivery of notices and the Remarketing Agent of an irrevocable written notice which states the name of the Owner, the principal amount and the date on which the same shall be purchased, which date shall be a Business Day not prior to the seventh day next succeeding the date of the delivery of such notice to the Trustee. Any notice delivered to the Trustee after 4:00 p.m., New York City time, shall be deemed to have been

received on the next succeeding Business Day. Payment of such Purchase Price shall be made from the sources and in the order of priority set forth in Section 4.15(e) on the date specified in such notice, provided such Bond is delivered, at or prior to 10:00 a.m., New York City time, on the date specified in such notice, to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

(b) So long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, only direct or indirect Participants may give notice of the election to tender Bonds or portions thereof and the Beneficial Owners shall not have the right to tender Bonds directly to the Trustee, except through such Participants.

*Section 4.12. Mandatory Tender for Purchase on Day Next Succeeding the Last Day of Each CP Interest Term*. On the day next succeeding the last day of each CP Interest Term for an Eligible Bond in a Commercial Paper Interest Rate Period, unless such day is the first day of a new Interest Rate Period for such Bond (in which event such Bond shall be subject to mandatory purchase pursuant to Section 4.14), such Bond shall be purchased from its Owner at the applicable Purchase Price payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; *provided, however,* that in any event such Bond will not bear interest at the CP Interest Term Rate after the last day of the applicable CP Interest Term. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority set forth in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

*Section 4.13. Mandatory Tender for Purchase on the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date*. On the Mandatory Purchase Date, Index Rate Tender Date or Term Rate Tender Date for a Series of Bonds (which, for the avoidance of doubt, can occur only on a Mandatory Purchase Date), unless such day is the first day of a new Interest Rate Period for such Bonds (in which event such Bonds shall be subject to mandatory purchase pursuant to Section 4.14), each Eligible Bond of such Series shall be purchased from the Owner thereof at the applicable Purchase Price, payable in immediately available funds, provided such Bond is delivered to the Trustee on or prior to 10:00 a.m., New York City time, on such day, or if delivered after 10:00 a.m., New York City time, on the next succeeding Business Day; *provided, however,* that in any event such Bond will not bear interest at the applicable Index Rate or Term Rate after the last day of the applicable Index Rate Period or Term Rate Period, respectively. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York

Stock Exchange. The Series 2022A Bonds shall be subject to mandatory tender pursuant to this Section 4.13 on the Initial Mandatory Purchase Date.

*Section 4.14. Mandatory Tender for Purchase on Conversion of Interest Rate Period*. Eligible Bonds of a Series shall be subject to mandatory tender for purchase on each Conversion Date (which shall be a Mandatory Purchase Date) at the applicable Purchase Price, payable in immediately available funds. The Purchase Price of any Bond so purchased shall be payable from the sources and in the order of priority specified in Section 4.15(e) only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof, in form satisfactory to such Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in this paragraph or in the notice provided pursuant to Section 2.10.

*Section 4.15. General Provisions Relating to Tenders*.

(a) *Creation of Bond Purchase Fund.*

(i) There shall be created and established hereunder with the Trustee a fund to be designated the "Bond Purchase Fund" to be held in trust only for the benefit of the Owners of tendered Bonds who shall thereafter be restricted exclusively to the moneys held in such fund for the satisfaction of any claim for the Purchase Price of such tendered Bonds. The Bond Purchase Fund and the Accounts therein are not Pledged Funds.

(ii) There shall be created and designated the following Accounts with respect to each Series of Bonds within the Bond Purchase Fund: the "Remarketing Proceeds Account" and the "Issuer Purchase Account." Moneys paid to the Trustee for the purchase of tendered or deemed tendered Bonds of a Series received from (A) the Remarketing Agent shall be deposited in the Remarketing Proceeds Account for such Series in accordance with the provisions of Section 4.15(d)(i) and (B) the Issuer shall be deposited in the Issuer Purchase Account in accordance with the provisions of Section 4.15(d)(ii). Moneys provided by the Issuer not required to be used in connection with the purchase of tendered Bonds shall be returned to the Issuer in accordance with Section 4.15(d) and Section 4.15(e).

(iii) Moneys in the Issuer Purchase Account and the Remarketing Proceeds Account with respect to a Series of Bonds shall not be commingled with other funds held by the Trustee and shall remain uninvested. The Issuer shall have no right, title or interest in any of the funds held on deposit in the Remarketing Proceeds Account or any remarketing proceeds held for any period of time by the Remarketing Agent.

(b) *Deposit of Bonds*. The Trustee agrees to hold all Bonds delivered to it pursuant to Section 4.11, Section 4.12, Section 4.13 or Section 4.14 in trust for the benefit

of the respective Owners which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds have been delivered to such Owner in accordance with the provisions of this Indenture and until such Bonds shall have been delivered by the Trustee in accordance with Section 4.15(f).

(c) *Remarketing of Bonds*.

(i) Immediately upon its receipt, but not later than noon, New York City time on the following Business Day, from an Owner of a Bond bearing interest at a Daily Interest Rate or a Weekly Interest Rate of a notice pursuant to Section 4.11, the Trustee shall notify the Remarketing Agent by telephone, promptly confirmed in writing by Electronic Means, of such receipt, specifying the principal amount of Bonds for which it has received such notice, the names of the Owners thereof and the date on which such Bonds are to be purchased in accordance with Section 4.11.

(ii) As soon as practicable, but in no event later than 10:15 a.m., New York City time, on a Purchase Date, the Remarketing Agent shall inform the Trustee by telephone, promptly confirmed in writing, by Electronic Means, of the principal amount of Purchased Bonds to be purchased on such date, the name, address and taxpayer identification number of each such purchaser, and the Authorized Denominations in which such Purchased Bonds are to be delivered. Upon receipt from the Remarketing Agent of such information, and in no event later than 12:30 p.m., New York City time, on the Purchase Date, the Trustee shall prepare Purchased Bonds in accordance with such information received from the Remarketing Agent for the registration of transfer and redelivery to the Remarketing Agent pursuant to paragraph (f) of this Section 4.15.

(iii) Any Purchased Bonds which are subject to mandatory tender for purchase in accordance with Section 4.12, Section 4.13 or Section 4.14 which are not presented to the Trustee on the Purchase Date and any Purchased Bonds which are the subject of a notice pursuant to Section 4.16 which are not presented to the Trustee on the Purchase Date, shall, in accordance with the provisions of Section 4.16, be deemed to have been purchased upon the deposit of moneys equal to the Purchase Price thereof into any or all of the accounts of the Bond Purchase Fund.

(d) *Deposits of Funds.*

(i) The Trustee shall deposit into the Remarketing Proceeds Account for the applicable Series of Bonds any amounts received by it in immediately available funds by 12:30 p.m., New York City time, on any Purchase Date from the Remarketing Agent against receipt of Bonds by the Remarketing Agent pursuant to Section 4.15(f) and on account of Purchased Bonds remarketed pursuant to the terms of the Remarketing Agreement.

(ii) The Issuer may, in its sole discretion, pay to the Trustee in immediately available funds the amount equal to the difference, if any, between the total Purchase Price of Bonds to be purchased and the amount of money deposited under Section 4.15(d)(i) (the *"Additional Liquidity Drawing Amount"*) by 12:45 p.m., New York City time. The Trustee shall deposit any Additional Liquidity Drawing Amounts into the Issuer Purchase Account for the applicable Series of Bonds.

(iii) The Trustee shall hold all proceeds received from the Remarketing Agent or the Issuer pursuant to this Section 4.15(d) in trust for the tendering Owners. In holding such proceeds and moneys, the Trustee will be acting on behalf of such Owners by facilitating the purchase of the Bonds and not on behalf of the Issuer and will not be subject to the control of the Issuer. Subject to the provisions of Section 4.15(e), following the discharge of the pledge created by Section 5.01 or after payment in full of the Bonds, the Trustee shall pay any moneys remaining in any Account of the Bond Purchase Fund directly to the Persons for whom such money is held upon presentation of evidence reasonably satisfactory to the Trustee that such Person is rightfully entitled to such money and the Trustee shall not pay such amounts to any other Person.

(e) *Disbursements; Payment of Purchase Price*. Moneys delivered to the Trustee on a Purchase Date shall be applied at or before 1:00 p.m., New York City time, on such Purchase Date to pay the Purchase Price of Purchased Bonds of the applicable Series in immediately available funds as follows in the indicated order of application and, to the extent not so applied on such date, shall be held in the separate and segregated Accounts of the Bond Purchase Fund for the benefit of the Owners of the Purchased Bonds which were to have been purchased:

FIRST: Moneys deposited in the Remarketing Proceeds Account for the Bonds of the applicable Series; and

SECOND: Moneys deposited in the Issuer Purchase Account for the Bonds of the applicable Series.

Any moneys held by the Trustee in the Issuer Purchase Account remaining unclaimed by the Owners of the Purchased Bonds which were to have been purchased for two years after the respective Purchase Date for such Bonds shall be paid to the Issuer, upon a request in a Written Direction of the Issuer against written receipt therefor. The Owners of Purchased Bonds who have not yet claimed money in respect of such Bonds shall thereafter be entitled to look only to the Trustee, to the extent it shall hold moneys on deposit in the Bond Purchase Fund, or the Issuer to the extent moneys have been transferred in accordance with this Section 4.15(e). The Trustee shall have no obligation to advance its own funds to fund the Bond Purchase Fund or otherwise pay the Purchase Price on any Bonds.

(f) *Delivery of Purchased Bonds.*

(i) The Remarketing Agent shall give telephonic notice, promptly confirmed by a written notice, by Electronic Means, to the Trustee on each date on which Bonds shall have been purchased pursuant to Section 4.11, Section 4.12, Section 4.13, or Section 4.14, specifying the principal amount of such Bonds, if any, sold by it and a list of such purchasers showing the names and Authorized Denominations in which such Bonds shall be registered, and the addresses and social security or taxpayer identification numbers of such purchasers. By 12:30 p.m., New York City time, on the Purchase Date, a principal amount of Bonds equal to the amount of Purchased Bonds purchased with moneys from the Remarketing Proceeds Account shall be made available by the Trustee to the Remarketing Agent against payment therefor in immediately available funds.

(ii) A principal amount of Bonds equal to the amount of Purchased Bonds purchased from moneys on deposit in the Issuer Purchase Account shall be delivered on the day of such purchase by the Trustee to or as directed by the Issuer. The Trustee shall register such Bonds in the name of the Issuer or as otherwise directed by the Issuer.

*Section 4.16. Notice of Mandatory Tender for Purchase*. In connection with any mandatory tender for purchase of Bonds in accordance with Section 4.12, Section 4.13 or Section 4.14, the Trustee shall give the notice (which in the case of a mandatory tender pursuant to Section 4.14 shall be given as a part of the notice given pursuant to Section 2.06(c), Section 2.07(c), Section 2.08(c), Section 2.09(c) or Section 2.14(c)) stating: (a) that the Purchase Price of any Bond so subject to mandatory tender for purchase shall be payable only upon surrender of such Bond to the Trustee at the office specified in such notice, accompanied by an instrument of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange; (b) that all Bonds so subject to mandatory tender for purchase shall be purchased on the Mandatory Purchase Date, unless (i) a Failed Remarketing shall have occurred prior to such Mandatory Purchase Date, in which case such Bonds shall be redeemed rather than purchased on such Mandatory Purchase Date, or (ii) such Bonds shall have otherwise been redeemed on or prior to, or are not Outstanding as of, such Mandatory Purchase Date; and (c) that in the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on such Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and that no interest shall accrue thereon on and after such Mandatory Purchase Date and that the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof. Any such notice of a mandatory tender of Bonds pursuant to Section 4.12, Section 4.13 or Section 4.14 shall be given no less than thirty (30) days prior to the applicable Mandatory Purchase Date, and the Trustee shall give a conditional notice of extraordinary redemption pursuant to Section 4.04 no later than the applicable deadlines set forth in that section to provide for the extraordinary redemption of the Bonds if a Failed Remarketing occurs prior to the Mandatory Purchase Date. No later than five (5) Business Days prior to the date on which such conditional notice of extraordinary redemption is required to be given by the Trustee pursuant

to Section 4.4, the Issuer shall direct the Trustee to send such conditional redemption notice pursuant to a Written Direction in the form attached hereto as *Exhibit 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, the Issuer and the Remarketing Agent, absent manifest error. If any Owner of a Bond who shall have given notice of tender of purchase pursuant to Section 4.11 or any Owner of a Bond subject to mandatory tender for purchase pursuant to Section 4.12, Section 4.13 or Section 4.14 shall fail to deliver such Bond to the Trustee at the place and on the applicable date and at the time specified, or shall fail to deliver such Bond properly endorsed, such Bond shall constitute an Undelivered Bond. If funds in the amount of the Purchase Price of the Undelivered Bond are available for payment to the Owner thereof on the date and at the time specified, from and after the date and time of that required delivery, (i) the Undelivered Bond shall be deemed to be purchased and shall no longer be deemed to be Outstanding under this Indenture; (ii) interest shall no longer accrue thereon; and (iii) funds in the amount of the Purchase Price of the Undelivered Bond shall be held by the Trustee for such Bond for the benefit of the Owner thereof, to be paid on delivery (and proper endorsement) of the Undelivered Bond to the Trustee at its designated corporate trust office. Any funds held by the Trustee as described in clause (iii) of the preceding sentence shall be held uninvested.

*Section 4.18. Remarketing of Bonds; Notice of Interest Rates*. (a) Upon a mandatory tender or notice of the tender for purchase of Bonds, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds subject to conditions in the Remarketing Agreement, any such sale to be made on the Purchase Date in accordance with this Article IV at a price equal to the principal amount thereof plus accrued interest, if any, thereon to the Purchase Date. The Remarketing Agent agrees that it shall not sell any Bonds purchased pursuant to this Article IV to the Issuer or a Project Participant, or to any Person who controls, is controlled by, or is under common control with the Issuer or a Project Participant.

(b) The Remarketing Agent shall determine the rate of interest to be borne by the Bonds bearing interest at a Daily Interest Rate, Weekly Interest Rate, CP Interest Term Rates or a Term Rate and the CP Interest Terms for each Bond during each Commercial Paper Interest Rate Period, and the applicable Calculation Agent shall determine the rate of interest to be borne by each Series of Bonds bearing interest at an Index Rate, all as provided in Article II, and shall furnish to the

Trustee and to the Issuer upon request, in a timely fashion by Electronic Means, each rate of interest and CP Interest Term so determined.

(c) Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and is continuing an Event of Default, there shall be no remarketing of Bonds tendered or deemed tendered for purchase.

*Section 4.19. The Remarketing Agent*. (a) The Remarketing Agent shall be authorized by law to perform all the duties imposed upon it pursuant to the Remarketing Agreement. The Remarketing Agent or any successor shall signify its acceptance of the duties and obligations imposed upon it pursuant to the Remarketing Agreement by an agreement under which the Remarketing Agent will agree to:

(i) determine the interest rates applicable to the Bonds of the applicable Series and give written notice to the Trustee of such rates and periods in accordance with Article II;

(ii) keep such books and records as shall be consistent with prudent industry practice; and

(iii) use its best efforts to remarket Bonds in accordance with the Remarketing Agreement.

(b) The Remarketing Agent shall hold all amounts received by it in accordance with any remarketing of Bonds in trust only for the benefit of the Owners of tendered Bonds and shall not commingle such amounts with any other moneys.

*Section 4.20. Qualifications of Remarketing Agent; Resignation; Removal*. (a) Each Remarketing Agent shall be a member of the Financial Industry Regulatory Authority or subject to supervision by the Office of the Comptroller of the Currency, having a combined capital stock, surplus and undivided profits of at least $50,000,000 and be authorized by law to perform all the duties imposed upon it by this Indenture. Any successor Remarketing Agent shall have senior unsecured long term debt which shall be rated by each Rating Agency.

(b) A Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Remarketing Agreement by giving written notice to the Trustee and the Issuer. A Remarketing Agent may be removed at the direction of the Issuer at any time on 30 days' prior written notice, in a Written Direction of the Issuer, filed with such Remarketing Agent for the related Series of Bonds and the Trustee. No such resignation or removal shall be effective until a successor has been appointed and has accepted such duties.

*Section 4.21. Successor Remarketing Agents*. (a) Any corporation, association, partnership or firm which succeeds to the business of the Remarketing Agent as a whole or substantially as a whole, whether by sale, merger, consolidation or otherwise, shall thereby become vested with all the property, rights and powers of such Remarketing Agent hereunder.

(b) In the event that the Remarketing Agent has given written notice of resignation or has been notified of its impending removal in accordance with Section 4.20(b), the Issuer shall appoint a successor Remarketing Agent.

(c) In the event that the property or affairs of the Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed its successor, the Issuer shall appoint a successor and, if no appointment is made within 30 days, the Trustee shall apply to a court of competent jurisdiction for such appointment.

*Section 4.22. Tender Agent*. The Trustee shall serve as the tender agent for any Series of Bonds for which optional or mandatory tender for purchase is applicable under this Article IV, and as tender agent it and each successor Trustee appointed in accordance with this Indenture shall:

(a) hold all Bonds delivered to it for purchase hereunder in trust for the exclusive benefit of the respective Owners that shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners;

(b) hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the exclusive benefit of the Person that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to it for the account of such Person and, thereafter, for the benefit of the Owners tendering such Bonds; and

(c) keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection at all times during regular business hours (upon reasonable prior written notice of inspection) by the Issuer and the Remarketing Agent for such Series of Bonds.

## ARTICLE V

## ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

*Section 5.01. Pledge Effected by This Indenture*. (a) The Bonds and the Interest Rate Swap are limited obligations of the Issuer payable solely from and secured as to the payment of the principal and Redemption Price thereof, and interest thereon, in accordance with their terms and the provisions of this Indenture solely by, the Trust Estate. Pursuant to the Granting Clauses of this Indenture, the Trust Estate has been conveyed, assigned and pledged to the payment of the principal and Redemption Price of and interest on the Bonds and the Interest Rate Swap Payments in accordance with their terms, and any other senior, parity and subordinate obligations of the Issuer secured by the lien of this Indenture, subject to (i) the pledge of and lien on the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparty, and (ii) the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture. The Trust Estate thereby pledged and assigned shall immediately be subject to the lien of such pledge without

any further physical delivery thereof or other further act, and the lien of such pledge shall be a first lien and shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice thereof.

(b) None of the Bonds, the Interest Rate Swap or the Commodity Swap constitute a debt or liability of the State or of any political subdivision thereof, other than as limited obligations of the Issuer, and the Issuer shall not be obligated to pay the principal or Redemption Price of, or interest on, the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments except from the funds provided therefor under this Indenture. Neither the faith and credit nor the taxing power of the State or of any political subdivision thereof, including the Issuer, or of any Project Participant is pledged to the payment of the principal or Redemption Price of and interest on the Bonds, the Interest Rate Swap Payments or the Commodity Swap Payments. The issuance of the Bonds and the execution and delivery of the Interest Rate Swap and the Commodity Swap shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation or to make any appropriation for their payment. The Issuer has no taxing power.

(c) Nothing contained in this Indenture shall be construed to prevent the Issuer from acquiring, constructing or financing, through the issuance of its bonds, notes or other evidences of indebtedness, any facilities or supplies of Energy other than the Clean Energy Project; *provided* that such bonds, notes or other evidences of indebtedness shall not be payable out of or secured by the Trust Estate or any portion thereof, and neither the cost of such facilities or supplies of Energy nor any expenditure in connection therewith or with the financing thereof shall be payable from the Trust Estate or any portion thereof.

*Section 5.02. Establishment of Funds and Accounts*. (a) The following Funds and Accounts are hereby established, each of which shall be held by the Trustee except as indicated below:

(i) Project Fund,

(ii) Revenue Fund,

(iii) Operating Fund,

(iv) Debt Service Fund, consisting of the Debt Service Account (and within such Account, a Capitalized Interest Subaccount) and the Redemption Account,

(v) Commodity Swap Payment Fund,

(vi) General Reserve Fund,

(vii) Energy Remarketing Reserve Fund, consisting of a Remediation Account,

(viii) Assignment Payment Fund,

(ix) Bond Purchase Fund established pursuant to Section 4.15, consisting of the Issuer Purchase Account and the Remarketing Proceeds Account; and

(x) Administrative Fee Fund.

(b) Within the Funds and Accounts established hereunder and held by the Trustee, the Trustee may create additional Accounts in any Fund or subaccounts in any Accounts as may facilitate the administration of this Indenture. The Issuer may, by Supplemental Indenture, with the prior written approval of the Trustee, establish one or more additional accounts or subaccounts. By Supplemental Indenture, the Issuer may also (i) establish custodial accounts to be held by the Trustee as custodian to receive Revenues paid by the Project Participants under the Power Supply Contracts, and (ii) provide for the application of such amounts for transfer to the Revenue Fund and for such other purposes as may be specified therein.

*Section 5.03. Project Fund*. (a) There shall be paid into the Project Fund proceeds of the Bonds in the amount specified by Written Request of the Issuer, and there may be paid into the Project Fund, at the option of the Issuer, any moneys received for or in connection with the Clean Energy Project by the Issuer from any other source, unless required to be otherwise applied as provided by this Indenture. Upon delivery of the Bonds, the Trustee shall immediately transfer from the Project Fund into the Capitalized Interest Subaccount of the Debt Service Account an amount, specified by Written Request of the Issuer, representing capitalized interest on the Bonds to the date set forth in such Written Request. Except as otherwise provided in this Section 5.03, amounts in Project Fund shall be applied by the Issuer to pay the Cost of Acquisition and any capitalized interest on the Series 2022A Bonds.

(b) Before any payment is made by the Trustee from the Project Fund, the Issuer shall file with the Trustee a Written Request of the Issuer, showing with respect to each payment to be made, the name of the Person to whom payment is due and the amount to be paid, and stating that the obligation to be paid was incurred and is a proper charge against the Project Fund. To the extent that the Written Request includes amounts to be paid pursuant to the Energy Purchase Agreement, copies of the invoices or requests for direct payments submitted under the Energy Purchase Agreement shall be attached to the Written Request. Each such Written Request shall be sufficient evidence to the Trustee: (i) that obligations in the stated amounts have been incurred by the Issuer and that each item thereof is a proper charge against the Project Fund; and (ii) that there has not been filed with or served upon Issuer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the Persons named in such Written Request which has not been released or will not be released simultaneously with the payment of such obligation other than materialmen's or mechanics' liens accruing by mere operation of law.

(c) Upon receipt of each such Written Request, the Trustee shall pay the amounts set forth therein as directed by the terms thereof from the applicable Account in accordance with and subject to the applicable terms of this Section 5.03.

(d) Notwithstanding any of the other provisions of this Section, to the extent that other moneys are not available therefor, amounts in Project Fund shall be applied to the payment of principal of and interest on Bonds when due.

(e) Upon Written Direction of the Issuer, but not earlier than six months after the date of delivery of the Bonds, the Trustee shall transfer to the Revenue Fund any amounts remaining on deposit in Project Fund.

*Section 5.04. Revenues and Revenue Fund; Other Amounts*. (a) All Revenues shall be deposited promptly by the Trustee upon receipt thereof into the Revenue Fund; *provided* that, for the avoidance of doubt, if any amounts are received from a Project Participant for which Outstanding Sold Receivables exist, as identified in a written notice from the Issuer to the Trustee, the Trustee shall promptly cause any such receipts to be paid to the Energy Supplier to the extent of such Outstanding Sold Receivables without setoff of any kind in accordance with Section 2.7 of the Receivables Purchase Provisions and any remaining amounts received from such Project Participant shall be deposited into the Revenue Fund.

(b) In the event that any Specified Project Participant fails to pay the amount due under its Power Supply Contract, the Trustee shall perform the following actions on behalf of the Issuer under Section 2.1 of the Receivables Purchase Provisions: (i) provide a preliminary notice by email to the Issuer and the Energy Supplier that a Specified Project Participant will fail to make a payment as soon as practicable after becoming aware that a payment default will occur and in any event no later than the end of the calendar day on which the relevant payment default occurs, and (ii) prepare and deliver to the Energy Supplier a Put Option Notice by 12:00 p.m. New York City time on the Business Day following any such payment default.. On the twenty-fourth day of the Month in which such Put Option Notice was delivered (or if such day is not a Business Day, the next Business Day following the twenty-fourth day of such Month), the Trustee shall deliver to the Energy Supplier the bill of sale and certificates required by Section 2.3(a) of the Receivables Purchase Provisions. The Trustee is hereby authorized to sell the Put Receivables then owed by the Specified Project Participants under their respective Power Supply Contracts pursuant to the Receivables Purchase Provisions and to take all actions on its part necessary in connection therewith. All amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Put Receivables shall be deposited in the Revenue Fund for application pursuant to Section 5.05.

(c) Upon receipt of the preliminary notice from the Trustee pursuant to (b)(i) above, the Issuer shall:

(i) in consultation with the Energy Supplier, determine the amount of the Net Participant Shortfall Amount, if any, resulting from such failure to pay; and

(ii) give prompt written notice of the amounts of such Net Participant Shortfall Amount, if any, and the amount of such nonpayment and the resulting Net Participant Shortfall Amount, to the Trustee, the Energy Supplier and the Commodity Swap Counterparty.

(d) The following amounts, which are payable to the Trustee but do not constitute Revenues, shall be applied by the Trustee as follows:

(i) any Termination Payment shall be deposited directly into the Redemption Account of the Debt Service Fund as provided in Section 5.08;

(ii) any Assignment Payment shall be deposited directly into the Assignment Payment Fund as provided in Section 5.12;

(iii) [Reserved];

(iv) amounts representing the Project Administration Fee, together with any amounts paid by the Project Participants under a Prepaid Clean Energy Project Administration Agreement, shall be paid as received to Issuer into the Administrative Fee Fund;

(v) any Interest Rate Swap Receipts shall be deposited directly into the Debt Service Account as provided in Section 2.13; and

(vi) any amounts required by Section 5.11 to be deposited into the Energy Remarketing Reserve Fund shall be deposited directly therein.

*Section 5.05. Payments from Revenue Fund*. (a) In each Month during which there is a deposit of Revenues into the Revenue Fund (but in no case later than the respective dates set forth below), the Trustee shall apply the amounts on deposit in the Revenue Fund, to the extent available, for credit or deposit to the Funds and Accounts indicated below, in the amounts described below (such application to be made in such a manner so as to assure good funds are available on the respective dates set forth below) in the following order of priority:

(i) [Reserved.];

(ii) To the Operating Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount, if any, required so that the balance therein shall equal the amount necessary for the payment of Operating Expenses coming due for such Month;

(iii) Subject to the provisos below, to the Debt Service Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day) for the credit to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in Schedule II hereto, or (B) the amount necessary to cause an amount equal to the cumulative unpaid Scheduled Debt Service Deposits due through such date to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

(iv) To the Commodity Swap Payment Fund, on or before the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day),

the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

(v) To the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Put Receivables and the payment of interest on all Put Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

*provided, however,* that if a Project Participant's payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred under clause (iii) above to the extent necessary such that the amount available for transfer under clause (iv) above is not less than (A) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (B) the sum of all Net Participant Shortfall Amounts for such Month; and

*provided further,* the amount required to be transferred to the Debt Service Account pursuant to clause (iii) above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

(b) If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified on Schedule II, the Trustee shall immediately notify the Issuer of such deficiency and the Trustee shall (i) if the Issuer has not previously done so, cause the Issuer to suspend all deliveries of all quantities of Energy under a Power Supply Contract to any Project Participant that is in default thereunder, and (ii) promptly give notice to the Energy Supplier to follow the Remarketing Provisions.

(c) In each Month during which (i) there is a deposit of Revenues into the Revenue Fund and (ii) payment of a Principal Installment is due, after making such transfers, credits and deposits as required by paragraph (a) above and after the applicable Principal Installment payment date, the Trustee shall credit to the General Reserve Fund the remaining balance in the Revenue Fund.

(d) So long as there shall be held in the Debt Service Fund an amount sufficient to pay in full all Outstanding Bonds and Interest Rate Swap Payments in accordance with their terms (including principal or applicable Sinking Fund Installments and interest thereon), no transfers shall be required to be made to the Debt Service Fund.

*Section 5.06. Operating Fund*. (a) Amounts credited to the Operating Fund shall be applied from time to time by the Trustee to the payment of (i) first, Rebate Payments, and (ii) second, any other Operating Expenses then due and payable.

(b) Amounts credited to the Operating Fund that the Trustee, on the last Business Day of each Month, determines to be in excess of the requirements of such Fund for such Month, shall be applied to make up any deficiencies in the Debt Service Account. Any balance of such excess not

required to be so applied shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

*Section 5.07. Debt Service Fund—Debt Service Account*. (a) The amounts deposited into the Debt Service Account pursuant to Section 5.05(a)(iii) shall be held in such Account and applied to the payment of the Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date; *provided* that, for the purposes of computing the amount to be deposited in such Account, there shall be excluded from the required deposit the amount, if any, on deposit in the Capitalized Interest Subaccount or set aside in the Debt Service Account from the proceeds of Bonds (including amounts, if any, transferred thereto from the Project Fund) for the payment of interest on the Bonds. Amounts in the Capitalized Interest Subaccount shall be applied to Debt Service prior to other monies held within the Debt Service Account.

(b) The Trustee shall pay out of the Debt Service Account to the Paying Agent: (i) on or before each Interest Payment Date, the amount required for the interest on the Bonds payable on such date; (ii) on or before each Bond Payment Date, the Interest Rate Swap Payments then due, (iii) on or before the Bond Payment Date on which a Principal Installment is due, the amount required for the Principal Installment payable on such date; and (iv) on or before any redemption date, the amount required for the payment of the Redemption Price of and accrued interest on such Bonds then to be redeemed; *provided, however,* that if with respect to any Bonds or portions thereof the amounts due on any such Bond Payment Date and/or redemption date are intended to be paid from a source other than amounts in the Debt Service Account prior to any application of amounts in the Debt Service Account to such payments, then the Trustee (after Written Notice from the Issuer to the Trustee that the Issuer intends to make payments from a source other than amounts in the Debt Service Account) shall not pay any such amounts to the Paying Agent until such amounts have failed to be provided from such other source at the time required and if any such amounts due are paid from such other source the Trustee shall apply the amounts in the Debt Service Account to provide reimbursement for such payment from such other source as provided in the agreement governing reimbursement of such amounts to such other source. Such amounts shall be applied by the Paying Agent on and after the due dates thereof. The Trustee shall also pay out of the Debt Service Account the accrued interest included in the purchase price of Bonds purchased for retirement.

(c) Amounts accumulated in the Debt Service Account with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) shall, if so directed by the Issuer in a Written Request delivered not less than thirty (30) days before the due date of such Sinking Fund Installment, be applied by the Trustee to (i) the purchase of Bonds of the Series, maturity and tenor for which such Sinking Fund Installment was established, (ii) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms, or (iii) any combination of (i) and (ii). All purchases and redemptions of any Bonds pursuant to this subsection (c) shall be made at prices not exceeding the applicable sinking fund Redemption Price of such Bonds plus accrued interest, and such purchases shall be made in such manner as the Issuer shall direct the Trustee in writing. The applicable sinking fund Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Debt Service Account until such Sinking Fund Installment date, for the purpose of

calculating the amount of such Account. As soon as practicable after the thirtieth (30th) day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for the redemption on such due date, by giving notice as required by this Indenture, Bonds of the Series, maturity and tenor for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after making allowance for any Bonds purchased or redeemed pursuant to Section 5.10 which the Issuer has directed the Trustee in writing to apply as a credit against such Sinking Fund Installment as provided in Section 5.10(c). The Trustee shall pay out of the Debt Service Account to the Paying Agent, on or before such redemption date or maturity date, as applicable, the amount required for the redemption of the Bonds so called for redemption (or for the payment of such Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption or payment, as applicable. All expenses in connection with the purchase or redemption of Bonds shall be paid by the Issuer in such manner as the Issuer shall direct the Trustee in writing from the Operating Fund.

All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Trustee at its designated corporate trust office when such payment or redemption is made, and such Bonds, together with all Bonds purchased or redeemed pursuant to Section 5.10 that have been delivered to the Trustee for application as a credit against Sinking Fund Installments and all Bonds purchased by the Trustee pursuant to this Section 5.07, shall thereupon be promptly cancelled (or deemed to have been cancelled).

(d) Amounts accumulated in the Debt Service Account with respect to any principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established (together with amounts accumulated therein with respect to interest on such Bonds) shall, upon the reasonable prior Written Direction of the Issuer, be applied by the Trustee on or prior to the due date thereof, to (i) the purchase of such Bonds or (ii) the redemption at the principal amount of such Bonds, if then redeemable by their terms. All purchases and redemptions of any Bonds pursuant to this subsection (d) shall be made at prices not exceeding the principal amount of such Bonds plus accrued interest, and such purchases and redemptions shall be made in such manner as the Issuer shall determine. The principal amount of any Bonds so purchased or redeemed shall be deemed to constitute part of the Debt Service Account until such due date, for the purpose of calculating the amount of such Account.

(e) The amount deposited in the Debt Service Account on the Issue Date of any Series of Bonds from the proceeds thereof shall be set aside and applied to the payment of interest on such Series of Bonds and related Interest Rate Swap Payments.

(f) In the event of the refunding or defeasance of any Bonds, the Trustee shall, if directed by the Issuer in writing, withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts with the Trustee to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being refunded or defeased; *provided* that such withdrawal shall not be made unless immediately thereafter Bonds being refunded or defeased shall be deemed to have been paid pursuant to Section 12.01(b). In the event of such

refunding or defeasance, the Issuer may direct the Trustee to withdraw from the Debt Service Account all, or any portion of, the amounts accumulated therein with respect to Debt Service on the Bonds being refunded or defeased and deposit such amounts in any Fund or Account hereunder; *provided, however,* that such withdrawal shall not be made unless the Bonds being defeased shall be deemed to have been paid pursuant to Section 12.01(b) and *provided, further,* that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held hereunder.

(g) Any amount remaining in the Debt Service Account after a date for payment of a Principal Installment shall, to the extent not required to be retained therein for purposes of making future payments, be deposited in the Revenue Fund.

*Section 5.08. Debt Service Fund–Redemption Account*. (a) In the event of an early termination of the Energy Purchase Agreement, the Issuer shall direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of the Issuer. The Trustee shall deposit the Termination Payment into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the redemption of Outstanding Bonds pursuant to Section 4.01.

(b) Any amounts remaining on deposit in the Redemption Account following the redemption and payment of all Outstanding Bonds shall be applied by the Trustee first to pay any Swap Payment Deficiency, second to repurchase any Put Receivables owned by the Energy Supplier, and third, upon Written Direction of the Issuer to the Trustee, shall be transferred to the Revenue Fund.

(c) For the avoidance of doubt, no Extraordinary Expenses shall be paid from the Redemption Account.

*Section 5.09. Commodity Swap Payment Fund*. (a) Amounts credited to the Commodity Swap Payment Fund shall be applied from time to time by the Trustee to the payment of the Commodity Swap Payments when due.

(b) Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application in accordance with Section 5.05(a).

*Section 5.10. General Reserve Fund*. (a) The Trustee shall apply moneys on deposit in the General Reserve Fund in the following amounts and in the following order of priority: *first,* for deposit into the Debt Service Account, the amount necessary (or all of the moneys in the General Reserve Fund if less than the amount necessary) to make up any deficiencies in the deposits to such Account required by Section 5.05(a)(iii); *second,* for deposit into the Commodity Swap Payment Fund, the amount necessary to cause the balance therein to equal a Commodity Swap Payment that is then due; and *third* for deposit into the Operating Fund, the amount necessary for the payment of any Operating Expenses then due and payable and for which other funds are not available under this Indenture.

(b) Amounts on deposit in the General Reserve Fund not required to meet a deficiency or to make a deposit as provided in subsection (a) above shall be applied by the Trustee upon the Written Request of the Issuer to the following in the order listed below:

(i) payment of Extraordinary Expenses;

(ii) payment of any fees owed pursuant to any Qualified Investments;

(iii) annual refunds to Project Participants pursuant to the Power Supply Contracts;

(iv) the purchase or redemption of Bonds and expenses in connection with the purchase or redemption of such Bonds or any reserves which the Issuer determines shall be required for such purposes; and

(viii) any other lawful purpose of the Issuer under the Act;

*provided, however,* that, subject to the provisions of subsection (a) of this Section, amounts credited to the General Reserve Fund and required by this Indenture to be applied to the purchase or redemption of Bonds shall be applied to such purpose.

(c) If at any time Bonds of any Series, maturity and tenor for which Sinking Fund Installments shall have been established are (i) purchased or redeemed other than pursuant to Section 5.07(d) or (ii) deemed to have been paid pursuant to Section 12.01(b) and, with respect to such Bonds which have been deemed paid, irrevocable written instructions have been given by the Issuer to the Trustee to redeem or purchase the same on or prior to the due date of the Sinking Fund Installment to be credited under this subsection (c), the Issuer may from time to time and at any time by Written Direction to the Trustee specify the portion, if any, of such Bonds so purchased, redeemed or deemed to have been paid and not previously applied as a credit against any Sinking Fund Installment which are to be credited against future Sinking Fund Installments. Such direction shall specify the amounts of such Bonds to be applied as a credit against each Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Bonds are to be applied as a credit; *provided, however,* that none of such Bonds may be applied as a credit against a Sinking Fund Installment to become due less than thirty (30) days after such written notice is delivered to the Trustee. All such Bonds to be applied as a credit shall be surrendered to the Trustee for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

*Section 5.11. Energy Remarketing Reserve Fund.* There shall be paid by the Trustee into the Remediation Account of the Energy Remarketing Reserve Fund, and within such Remediation Account the subaccount appliable to each Project Participant, the amounts, as directed in a Written Direction of the Issuer, specified in Section 5(e)(i) of the Remarketing Provisions. In the case of

a Remediation Remarketing (as defined in the Remarketing Provisions) pursuant to Section 8 of the Remarketing Provisions, amounts shall be released from the applicable subaccount of the Remediation Account upon such remarketing and applied pursuant to a Written Direction of the Issuer as follows: (a) if the proceeds received by the Trustee from the remarketing equal or exceed the Remediation Remarketing Purchase Price, the portion of the applicable subaccount of the Remediation Account allocable to such remarketing shall be transferred to the General Reserve Fund, and (b) if the proceeds received by the Trustee from the remarketing are less than the Remediation Remarketing Purchase Price, then (x) the portion of the applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund allocable to such remarketing shall be used to make a payment to the Energy Supplier in an amount equal to the excess of such Remediation Remarketing Purchase Price over such proceeds received by the Issuer from the remarketing, and (y) any remaining amounts allocable to such remarketing shall be transferred to the General Reserve Fund. For purposes of this Section 5.11(a), the portion of the applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund specified in writing by the Issuer to the Trustee as the amount allocable to a remarketing shall consist of the product of (i) a fraction, the numerator of which is the purchase price of the Energy to be remarketed, and the denominator of which is the aggregate amount previously received by the Issuer from the sale of such Energy in Non-Private Business Sales (as defined in the Remarketing Provisions) or Private Business Sales (as defined in the Remarketing Provisions) that, as of the time of the remarketing, has not been remediated in accordance with Section 8 of the Remarketing Provisions, multiplied by (ii) the balance of the applicable subaccount of the Remediation Account of the Energy Remarketing Reserve Fund at the time of the remarketing.

*Section 5.12. Assignment Payment Fund*. In connection with the issuance of Refunding Bonds, any Assignment Payment received from the Energy Supplier shall be deposited into the Assignment Payment Fund to be transferred to the replacement energy supplier, *provided, however,* that if the existing Bonds have not been redeemed or defeased on or before the Mandatory Purchase Date, in whole, by the Refunding Bonds, all or a portion of the Assignment Payment shall be transferred to the Trustee for deposit as directed by the Issuer in writing to the Redemption Account in Section 5.08, along with the proceeds of the Refunding Bonds, in order to redeem all of the Outstanding Bonds.

*Section 5.13. Purchases of* Bonds. Except as otherwise provided in Section 5.07, any purchase of Bonds (or portions thereof) by or at the direction of the Issuer pursuant to this Indenture may be made with or without tenders of Bonds and at either public or private sale, in such manner as the Issuer may determine.

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

## ARTICLE VI

## DEPOSITORIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

*Section 6.01. Depositories*. (a) All moneys held by the Trustee under the provisions of this Indenture shall constitute trust funds and the Trustee may deposit such moneys with one or more Depositories in trust for the parties secured hereunder. All moneys deposited under the provisions of this Indenture with the Trustee or any Depository shall be held in trust and applied only in accordance with the provisions of this Indenture; provided, however, that the Trustee shall be entitled to rely, without verification, on any certificate of a bank, trust company, national banking association or other entity that certifies that it meets the requirements for being a Depository of moneys hereunder and shall not be responsible for any monitoring of such requirements after the initial deposit of any moneys pursuant to the provisions of this Indenture.

(b) Each Depository shall be a bank or trust company organized under the laws of any state of the United States or a national banking association having capital stock, surplus and undivided earnings of $50,000,000 or more, and willing and able to accept the office on reasonable and customary terms and authorized by law to act in accordance with the provisions of this Indenture; *provided, however,* that the Trustee shall be entitled to rely, without verification, on any certificate of a bank, trust company, national banking association or other entity that certifies that it meets the requirements for being a Depository of moneys hereunder and shall not be responsible for any monitoring of such requirements after the initial deposit of any moneys pursuant to the provisions of this Indenture.

*Section 6.02. Deposits*. (a) All Revenues and moneys held by any Depository under this Indenture may be placed on demand or time deposit, if and as directed by the Issuer in writing, *provided* that such deposits shall permit the moneys so held to be available for use at the time when needed. Any such deposit may be made in the commercial banking department of any Fiduciary, which may honor checks and drafts on such deposit with the same force and effect as if it were not such Fiduciary. All moneys held by any Fiduciary, as such, may be deposited by such Fiduciary in its banking department on demand or, if and to the extent directed by the Issuer in writing and acceptable to such Fiduciary, on time deposit, *provided* that such moneys on deposit be available for use at the time when needed. Such Fiduciary shall allow and credit on such moneys such interest, if any, as it customarily allows upon similar funds of similar size and under similar conditions or as required by law.

(b) All moneys held under this Indenture by the Trustee, the Issuer or any Depository shall be held in such manner as may then be required by applicable federal or State laws and regulations and applicable state laws and regulations of the state in which such Depository is located, regarding security for, or granting a preference in the case of, the deposit of public or trust funds or, in the absence of such laws and regulations, shall be either (i) continuously or fully insured by the Federal Deposit Insurance Corporation, or (ii) continuously and fully secured, to the extent not insured by the Federal Deposit Insurance Corporation, by lodging with the Trustee, as custodian, as collateral security, Qualified Investments having a market value (exclusive of accrued interest) not less than the amount of such moneys (or portion thereof not insured by the

Federal Deposit Insurance Corporation); *provided, however,* that, to the extent permitted by law, it shall not be necessary for the Fiduciaries to give security under this subsection (b) for the deposit of any moneys with them held in trust and set aside by them for the payment of the principal or Redemption Price of or interest on any Bonds, or for the Trustee, the Issuer or any Depository to give security for any moneys which shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

(c) All moneys deposited with the Trustee and each Depository shall be credited to the particular Fund or Account to which such moneys belong and, except as provided with respect to the investment of moneys in Qualified Investments in Section 6.03, the moneys credited to each particular Fund or Account shall be kept separate and apart from, and not commingled with, any moneys credited to any other Fund or Account or any other moneys deposited with the Trustee, the Issuer and each Depository, except as provided in Section 6.03.

*Section 6.03. Investment of Certain Funds*. Moneys held in the Debt Service Account shall be invested and reinvested by the Trustee at the Written Direction of the Issuer to the fullest extent practicable in Qualified Investments specified in such Written Direction which mature or are payable not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Accounts and may take the form of a Debt Service Fund Agreement. To the extent moneys held in the Debt Service Account are invested in a Debt Service Fund Agreement, the Issuer covenants and agrees that it will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with such Debt Service Fund Agreement without the written consent of the Trustee and the delivery to the Trustee of a Rating Confirmation with respect to such amendment. Moneys held in the Revenue Fund and the Project Fund may be invested and reinvested by the Trustee at the Written Direction of the Issuer in Qualified Investments specified in such Written Direction which mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Funds. Moneys in the Operating Fund (other than moneys in the Operating Fund held with respect to Rebate Payments) may be invested at the Written Direction of the Issuer in Qualified Investments specified in such Written Direction which mature within twelve months or which provide funds as needed; moneys held in the Operating Fund with respect to Rebate Payments shall be invested at the Written Direction of the Issuer in Qualified Investments specified in such Written Direction at fair market value; and moneys in the General Reserve Fund and the Energy Remarketing Reserve Fund may be invested at the Written Direction of the Issuer in Qualified Investments specified in such Written Direction; in any case the Qualified Investments in such Funds or in the Accounts therein shall mature not later than such times as shall be necessary to provide moneys when needed to provide payments from such Funds or Accounts. The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of the Issuer and may rely on such investment directions without verifying the suitability or legality of such investment and any deposit or investment directed by the Issuer shall constitute a certification by the Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, the Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any

other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

The Trustee shall only be required to make investments of moneys held by it in the Funds and Accounts established under this Indenture in accordance with Written Directions received by the Trustee from any Authorized Officer of the Issuer. The Trustee shall be entitled to rely in good faith on any Written Direction of the Issuer as to the suitability and legality of the directed investment and any deposit or investment directed by the Issuer shall constitute a certification by the Issuer that the assets so deposited or to be purchased pursuant to such directions are Qualified Investments. In making any investment in any Qualified Investments with moneys in any Fund or Account established under this Indenture, the Issuer may give Written Direction to the Trustee to combine such moneys with moneys in any other Fund or Account, but solely for purposes of making such investment in such Qualified Investments.

Interest earned on any moneys or investments in the Funds and Accounts established hereunder shall be paid into the Revenue Fund, other than interest earned on any moneys or investments in (i) the Redemption Account in the Debt Service Fund, (ii) the Operating Fund relating to Rebate Payments, (iii) the Energy Remarketing Reserve Fund, (iv) and the Administrative Fee Fund. Such interest shall be held in such respective Fund or Account for the purposes thereof. If no written investment directions have been delivered to the Trustee for any Fund or Account, moneys shall be held there uninvested by the Trustee.

Nothing in this Indenture shall prevent any Qualified Investments acquired as investments of or security for Funds held under this Indenture from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

Nothing in this Indenture shall preclude the Trustee from investing or reinvesting moneys that it holds in the Funds and Accounts established pursuant to this Indenture through its bond department; *provided, however,* that the Issuer may, in its discretion, give a Written Direction to the Trustee that such moneys be invested or reinvested in a manner other than through such bond department.

To the extent any Qualified Investment is insured, guaranteed or otherwise supported by any secondary facility, the Trustee shall make a claim under such facility at such time as shall be required to receive payment thereunder not later than the date required to make any necessary deposit pursuant to Section 5.05 or Section 5.09 or otherwise under Article V.

*Section 6.04. Valuation and Sale of Investments*. Obligations purchased as an investment of moneys in any Fund created under the provisions of this Indenture shall be deemed at all times to be a part of such Fund and any profit realized from the liquidation of such investment shall be credited to such Fund, and any loss resulting from the liquidation of such investment shall be charged to the respective Fund.

In computing the amount in any Fund created under the provisions of this Indenture for any purpose provided in this Indenture, obligations purchased as an investment of moneys therein shall be valued at the lower of market value or the amortized cost thereof. The accrued interest

paid in connection with the purchase of any obligation shall be included in the value thereof until interest on such obligation is paid. Such computation shall be determined at the Written Direction of the Issuer to the Trustee as of each Principal Installment payment date and at such other times as the Issuer shall reasonably determine. Guaranteed investment contracts or similar agreements shall be valued at their face value to the extent that they provide for withdrawals without market adjustment or penalty when they are required to provide payment pursuant to this Indenture.

Except as otherwise provided in this Indenture, the Trustee shall use reasonable efforts to sell at the best price obtainable, or present for redemption, any obligation so purchased as an investment whenever it shall be requested to do so by a Written Request of the Issuer. Whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund held by the Trustee or the Issuer, the Issuer or the Trustee at the Written Direction of the Issuer shall use reasonable efforts to sell at the best price obtainable or present for redemption such obligation or obligations designated by an Authorized Officer in a Written Direction of the Issuer to the Trustee as necessary to provide sufficient moneys for such payment or transfer. The Issuer acknowledges that, to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grants the Issuer the right to receive from the Trustee brokerage confirmations of security transactions as they occur, the Issuer specifically waives receipt of such confirmations to the extent permitted by law. The Trustee shall not be required to provide any brokerage information.

The Trustee shall not be liable or responsible for any loss, fee, tax or other charge resulting from any such investment, sale or presentation for redemption made in the manner provided above in Section 6.02, Section 6.03 or Section 6.04.

## ARTICLE VII

## PARTICULAR COVENANTS OF THE ISSUER

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

*Section 7.01. Payment of Bonds*. The Issuer shall duly and punctually pay or cause to be paid, but solely from the Trust Estate, the principal or Redemption Price, if any, of every Bond and the interest thereon, at the dates and places and in the manner provided in the Bonds, according to the true intent and meaning thereof.

*Section 7.02. Extension of Payment of Bonds*. The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement, and in case the maturity of any of the Bonds or the time for payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default under this Indenture, to the benefit of this Indenture or to any payment out of Revenues or Funds established by this Indenture, including the investment income, if any, thereof, pledged under this Indenture or the moneys (except moneys held in trust for the payment of particular Bonds or claims for interest pursuant to this Indenture) held by the Fiduciaries, except

subject to the prior payment of the principal of all Bonds Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended claims for interest.

*Section 7.03. Offices for Servicing Bonds*. Pursuant to Section 2.02, the Issuer has appointed the Trustee as Bond Registrar and Paying Agent for the Bonds and the Trustee hereby accepts such appointments. The Trustee shall at all times maintain one or more agencies or offices where Bonds may be presented for registration exchange or transfer, where principal and Redemption Price of and interest on the Bonds may be paid, where reports, statements and other documents furnished to the Trustee hereunder may be inspected and where notices, demands and other documents may be served upon the Issuer in respect of the Bonds or of this Indenture, and the Trustee shall continuously maintain or make arrangements to provide such services. The Issuer shall maintain one or more offices or agencies where notices, demands and other documents may be served upon the Issuer in respect of the Bonds or this Indenture, and the Issuer shall continuously maintain or make arrangements to provide such services.

*Section 7.04. Further Assurance*. At any and all times the Issuer shall, as far as it may be authorized by law, comply with any reasonable request of the Trustee to pass, make, do, execute, acknowledge and deliver all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming all and singular the rights, Revenues and other moneys, securities and funds hereby pledged, or intended so to be, or which the Issuer may become bound to pledge.

*Section 7.05. Power To Issue Bonds and Pledge the Trust Estate*. The Issuer is duly authorized under all applicable laws to create and issue the Bonds and to execute and deliver this Indenture and to pledge the Trust Estate, in the manner and to the extent provided in this Indenture. Except to the extent otherwise provided in or contemplated by this Indenture, the Trust Estate will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the security interest, the pledge and assignment created by this Indenture, and all action on the part of the Issuer to that end has been and will be duly and validly taken. The Bonds and the provisions of this Indenture are and will be the valid and legally enforceable limited obligations of the Issuer in accordance with their terms and the terms of this Indenture. The Issuer shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Revenues and other moneys, securities and funds pledged under this Indenture and all the rights of the Bondholders under this Indenture against all claims and demands of all Persons whomsoever.

*Section 7.06. Power To Fix and Collect Fees and Charges for the Sale of Energy*. The Issuer has, and, to the extent permitted by law, will have as long as any Bonds are Outstanding, good right and lawful power to fix, establish, maintain and collect fees and charges for the sale of Energy or otherwise with respect to the Clean Energy Project, subject to the terms of the Power Supply Contracts.

*Section 7.07. Creation of Liens*. Except as expressly permitted under the terms of this Indenture, for so long as any Bonds are Outstanding, the Issuer shall not, without a Rating

Confirmation, issue any bonds, notes, debentures or other evidences of indebtedness of similar nature payable from or secured by a pledge and assignment of the Trust Estate, other than the Bonds and bonds, notes, debentures or other evidences of indebtedness issued to refund Outstanding Bonds, or otherwise incur obligations other than those contemplated by this Indenture, the Energy Purchase Agreement, the Power Supply Contract, the Issuer Custodial Agreements, the Commodity Swap, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments), payable out of or secured by a pledge or assignment of, or lien on, the Trust Estate; and, except as expressly permitted under the terms of this Indenture, shall not, without a Rating Confirmation, create or cause to be created any lien or charge on the Trust Estate except as provided in or contemplated by this Indenture, the Energy Purchase Agreement, the Power Supply Contract, the Issuer Custodial Agreements, the Commodity Swap, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments); provided, however, that nothing contained in this Indenture shall prevent the Issuer from entering into or issuing, if and to the extent permitted by law (A) evidences of indebtedness (1) payable out of moneys in the Project Fund as part of the Cost of Acquisition or (2) payable out of or secured by a pledge and assignment of the Trust Estate or any part thereof to be derived on and after such date as the pledge of the Trust Estate provided in this Indenture shall be discharged and satisfied as provided in Section 12.01, or (B) Commodity Swap and Interest Rate Swaps upon the terms and conditions set forth herein.

*Section 7.08. [Reserved.]*

*Section 7.09. Limitations on Operating Expenses and Other Costs*. The Issuer shall not incur Operating Expenses in any Fiscal Year in excess of the reasonable and necessary amount of such Operating Expenses.

*Section 7.10. Amendments to Power Supply Contracts*. The Issuer will not consent or agree to or permit any termination or rescission of, assignment or novation (in whole or in part) by a Project Participant of, or amendment to or otherwise take any action under or in connection with any Power Supply Contract that will impair the ability of the Issuer to collect Revenues in each Fiscal Year which, together with the other amounts available therefor, shall provide an amount sufficient to pay:

(a) The amount estimated by the Issuer to be required to be paid during such Fiscal Year into the Operating Fund;

(b) The amounts, if any, required to be paid during such Fiscal Year into the Debt Service Fund other than any such amounts which the Issuer anticipates shall be transferred from other Funds or Accounts;

(c) The amounts, if any, to be paid during such Fiscal Year into any other Fund established under Section 5.02; and

(d) All other charges or liens whatsoever payable out of Revenues during such Fiscal Year;

*provided that:*

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

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

(iii) a Power Supply Contract may be amended upon receipt of (A) a Rating Confirmation with respect to such amendment, and (B) to the extent such amendment would have a material adverse effect (including, but not limited to, a change in the timing of payments, the source of such payments, or the Issuer's rights of collection thereof) upon the Receivables Purchase Provisions or the Commodity Swap, the consent of the Energy Supplier or the Commodity Swap Counterparty, respectively, such consent not to be unreasonably withheld or delayed;

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

(v) a Power Supply Contract may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement.

*Section 7.11. Power Supply Contracts; Energy Remarketing*. (a) The Issuer shall cause all Revenues payable by the Project Participants under the Power Supply Contracts to be payable directly to the Trustee for deposit into the Revenue Fund or custodial accounts established pursuant to Section 5.02(b). The Issuer shall enforce the provisions of the Power Supply Contracts, as well as any other contract or contracts entered into relating to the Clean Energy Project, and duly perform its covenants and agreements thereunder.

(b) In the event that any Project Participant fails to pay when due any amounts owed to the Issuer under a Power Supply Contract, the Issuer shall:

(i) promptly exercise its right to suspend all Energy deliveries to such Project Participant; and

(ii) promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Energy Purchase Agreement for each Month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

(c) In the event that any Project Participant delivers a Remarketing Election Notice (as defined in each Power Supply Contract) in respect of any Reset Period, then the Issuer will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Provisions for each month of such Reset Period with respect to any quantities of Energy that would otherwise have been delivered to such Project Participant.

(d) For the avoidance of doubt, as of the date of this Indenture, the Power Supply Contracts with the Project Participants set forth on Schedule I shall be the only Power Supply Contracts until such time, if any, that an assignment or novation occurs in accordance with the requirements set forth above. Without prejudice to the rights of the Energy Supplier to remarket Energy under the Energy Purchase Agreement or to an assignment or novation of a Power Supply Contract in compliance with this Section 7.11, the Issuer may sell the quantities of Energy to be delivered under the Energy Purchase Agreement only pursuant to the Power Supply Contracts. A copy of each Power Supply Contract and any amendment to a Power Supply Contract, certified by an Authorized Officer, shall be filed with the Trustee.

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

(b) The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Energy Purchase Agreement. The Issuer shall provide the Trustee with Written Notice of the Early Termination Payment Date (i) on the date on which a Failed Remarketing occurs, and (ii) in all other cases, not more than five (5) Business Days after such date is determined.

(c) The Issuer will not consent or agree to or permit any assignment of, rescission of or amendment to or otherwise take any action under or in connection with the Energy Purchase Agreement or the Energy Supplier Guaranty which will in any manner materially impair or materially adversely affect the rights of the Issuer thereunder or the rights or security of the Bondholders under this Indenture; *provided* that the Energy Purchase Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation with respect to such assignment or amendment. The Energy Purchase Agreement may also be amended in connection with a remediation pursuant to Section 18.3(b) of the Energy Purchase Agreement. Copies of the Energy Purchase Agreement, the Energy Supplier Guaranty and any amendments thereto, certified by an Authorized Officer, shall be filed with the Trustee.

*Section 7.13. [Reserved]*.

*Section 7.14. Commodity Swap*. The Issuer shall cause all Commodity Swap Receipts and any other amounts payable to the Issuer pursuant to the Commodity Swap to be collected and paid directly to the Trustee for deposit into the Revenue Fund. The Issuer shall enforce the provisions of the Commodity Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Commodity Swap Counterparty under the Commodity Swap. The Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take

any action under or in connection with the Commodity Swap that will impair the ability of the Issuer to comply during the current or any future year with the provisions hereof. The Issuer shall only exercise its right to terminate the Commodity Swap in compliance with Section 2.12(b). A copy of the Commodity Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Commodity Swap, certified by an Authorized Officer, shall be filed with the Trustee.

*Section 7.15. Interest Rate Swap*. The Issuer shall cause all Interest Rate Swap Receipts or other amounts payable to the Issuer pursuant to the Interest Rate Swap to be collected and paid to the Trustee for deposit into the Debt Service Account. The Issuer shall enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder. The Trustee shall promptly notify the Issuer of any payment default that has occurred and is continuing on the part of the Interest Rate Swap Counterparty under the Interest Rate Swap. The Issuer will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of the Issuer to comply during the current or any future year with the provisions hereof. The Issuer shall only exercise its right to terminate the Interest Rate Swap in compliance with Section 2.13(b). A copy of the Interest Rate Swap certified by an Authorized Officer shall be filed with the Trustee, and a copy of any amendment to the Interest Rate Swap, certified by an Authorized Officer, shall be filed with the Trustee.

*Section 7.16. Accounts and Reports*. (a) The Issuer shall keep or cause to be kept with respect to the Clean Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of this Indenture, in which complete and correct entries shall be made of its transactions relating to the Clean Energy Project, the amount of Revenues and the application thereof and each Fund and Account established under this Indenture and relating to its costs and charges under the Power Supply Contracts and any other contracts for the sale or purchase of Energy, and which, together with the Energy Purchase Agreement and all contracts and all other books and papers of the Issuer relating to the Clean Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of the Trustee and the Holders of an aggregate of not less than 5% in principal amount of the Bonds then Outstanding or their representatives duly authorized in writing.

(b) The Trustee shall advise the Issuer promptly after the end of each month of the respective transactions during such month relating to each Fund and Account held by it under this Indenture.

(c) The Issuer shall file with the Trustee (i) forthwith upon becoming aware of any Event of Default or default in the performance by the Issuer of any covenant, agreement or condition contained in this Indenture, a Written Certificate of the Issuer and specifying such Event of Default or default and (ii) within 180 days after the end of each Fiscal Year, commencing with the first Fiscal Year ending following the issuance of the Bonds, a Written Certificate of the Issuer signed by an appropriate Authorized Officer stating whether, to the best of such Authorized Officer's knowledge and belief, the Issuer has kept, observed, performed and fulfilled its covenants and obligations contained in this Indenture and that there does not exist at the date of such certificate

any default by the Issuer under this Indenture or any Event of Default or other event which, with the lapse of time specified in Section 8.01, would become an Event of Default, or, if any such default or Event of Default or other event shall so exist, specifying the same and the nature and status thereof.

(d) The reports, statements and other documents required to be furnished to the Trustee pursuant to any provisions of this Indenture shall be available for the inspection of Bondholders at all times during regular business hours at the designated corporate trust office of the Trustee (upon reasonable prior written notice of inspection delivered to the Trustee), subject to such reasonable regulations as the Trustee may from time to time determine to be advisable or required by law, and shall be mailed to each Bondholder who shall file a written request therefor with the Issuer. The Issuer may charge each Bondholder requesting such reports, statements and other documents a reasonable fee to cover reproduction, handling and postage.

*Section 7.17. Payment of Taxes and Charges*. The Issuer will from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of the Issuer or upon the rights, revenues, income, receipts, and other moneys, securities and funds of the Issuer when the same shall become due (including all rights, moneys and other property transferred, assigned or pledged under this Indenture), and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which the Issuer shall in good faith contest by proper legal proceedings if the Issuer shall in all such cases have set aside on its books reserves deemed adequate by the Issuer with respect thereto.

*Section 7.18. Tax Covenants*. (a) The Issuer covenants that it shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any of the Bonds under Section 103 of the Internal Revenue Code and the applicable Treasury Regulations promulgated thereunder or, as applicable, would adversely affect the Subsidy Payments or receipt thereof by the Issuer or the Trustee. Without limiting the generality of the foregoing, the Issuer covenants that it will (i) comply with the instructions and requirements of the Tax Agreement and (ii) exercise commercially reasonable efforts to cause the Bonds to be redeemed (A) in such amount as may be necessary to maintain the exclusion from federal gross income of interest on the Bonds and (B) in whole in the event that interest on the Bonds becomes includible in federal gross income. The Issuer further agrees to follow any directions provided by Special Tax Counsel with respect to any such redemption.] This covenant shall survive payment in full or defeasance of the Bonds.

(b) In the event that at any time the Issuer is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee under this Indenture, the Issuer shall so instruct the Trustee in writing as to the specific actions to be taken, and the Trustee shall take such action as specified in such instructions.

(c) Notwithstanding any other provisions of this Section, if the Issuer shall provide to the Trustee an Opinion of Special Tax Counsel that any specified action required under this Section is

no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or the qualification of the Issuer to receive Subsidy Payments with respect to the applicable Series of Bonds, the Issuer and the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Agreement, and the covenants hereunder shall be deemed to be modified to that extent.

(d) Notwithstanding any other provision of this Indenture to the contrary, upon the Issuer's failure to observe or refusal to comply with the above covenants, the Holders of the Bonds, or the Trustee acting on their behalf pursuant to their written request and direction, shall be entitled to the rights and remedies provided to Bondholders under this Indenture based upon the Issuer's failure to observe, or refusal to comply with, the above covenants. In connection with any action taken by it under this Section, the Trustee shall have the benefit of all of the protective provisions set forth in Article IX.

*Section 7.19. General*. (a) The Issuer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Issuer under the provisions of the Act and this Indenture.

(b) The Issuer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to (other than the sale in the normal course of business of Energy to the Project Participants pursuant to the Power Supply Contracts), or reorganize, reincorporate or reconstitute into or as, another entity unless, (i) prior to such event, the Issuer receives confirmation from the Commodity Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Commodity Swap and confirmation from the Interest Rate Swap Counterparty that such event does not trigger a termination event under Section 5(b)(iv) of the Interest Rate Swap; and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of the Issuer under the Commodity Swap and the Interest Rate Swap.

(c) The Issuer shall not take any action, or fail to take any action, or permit any action to be taken on its behalf or cause or permit any circumstance within its control to arise or continue, if any such action or inaction would adversely affect the ratings on the Bonds.

(d) Upon the date of authentication and delivery of any of the Bonds, all conditions, acts and things required by law and this Indenture to exist, to have happened and to have been performed precedent to and in the issuance of such Bonds shall exist, have happened and have been performed, and the issuance of such Bonds, together with all other obligations of the Issuer, shall comply in all respects with the applicable laws of the State.

*Section 7.20. Bankruptcy*. To the extent permitted by law, the Issuer shall not, prior to the date which is one year and one day after the termination of this Indenture, acquiesce, petition, or otherwise invoke the process of any court or government authority for the purpose of commencing or sustaining a case under any federal or state bankruptcy, insolvency, or similar law or appointing a receiver, liquidator, assignee, trustee, custodian or sequestrator for any substantial part of its

property, or ordering the winding up or liquidation of the affairs of the Issuer. This covenant shall survive the termination of this Indenture.

*Section 7.21. [Reserved]*.

*Section 7.22. Replacement of Energy Supplier Guaranty*. The Issuer covenants that it shall not replace Morgan Stanley, as issuer of the Energy Supplier Guaranty, or replace any successor issuer thereof, in each case without obtaining a Rating Confirmation. For the avoidance of doubt, this Section 7.22 is in addition to, and does not override, any other provision of this Indenture or any other document relating to the replacement of the issuer of the Energy Supplier Guaranty.

*Section 7.23. Avoidance of Failed Remarketing*. The Issuer covenants that it will exercise commercially reasonable efforts to avoid a Failed Remarketing.

## ARTICLE VIII

## EVENTS OF DEFAULT AND REMEDIES

*Section 8.01. Events of Default*. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) default shall be made in the due and punctual payment of the principal or Redemption Price or Purchase Price of any Bond when and as the same shall become due and payable, whether at maturity or by call for redemption or tender, or otherwise;

(b) default shall be made in the due and punctual payment of any installment of interest on any Bond or the unsatisfied balance of any Sinking Fund Installment therefor (except when such Sinking Fund Installment is due on the maturity date of such Bond), when and as such interest installment or Sinking Fund Installment shall become due and payable;

(c) default shall be made by the Issuer in the performance or observance of any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and such default shall continue for a period of 60 days or, if such default cannot reasonably be remedied within such 60-day period, such longer period so long as diligent efforts are being made to remedy such default, after written notice thereof specifying such default and requiring that it shall have been remedied and stating that such notice is a "Notice of Default" hereunder is given to the Issuer by the Trustee or to the Issuer and to the Trustee by the Holders of not less than 10% in principal amount of the Bonds Outstanding;

(d) default shall be made in the due and punctual payment of any Commodity Swap Payment or Interest Rate Swap Payment when and as the same shall become due and payable;

(e) the Issuer shall commence a voluntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (*provided, however,* that such event shall not constitute an Event of Default hereunder unless in addition, (i) the Issuer is unable to meet its debts with respect to the Clean Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or the Clean Energy Project, or shall authorize, apply for or consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official for the Clean Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefrom, or shall make any general assignment for the benefit of creditors, or shall make a written declaration or admission to the effect that it is unable to meet its debts with respect to the Clean Energy Project as such debts mature, or shall authorize or take any action in furtherance of any of the foregoing;

(f) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Issuer in an involuntary case or similar proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (*provided, however,* that such event shall not constitute an Event of Default hereunder unless in addition, (i) the Issuer is unable to meet its debts with respect to the Clean Energy Project as such debts mature or (ii) any plan of adjustment or other action in such proceeding would affect in any way the Revenues or the Clean Energy Project, or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Clean Energy Project, or any part thereof, and/or the rents, fees, charges or other revenues therefor, or a decree or order for the dissolution, liquidation or winding up of the Issuer and its affairs or a decree or order finding or determining that the Issuer is unable to meet its debts with respect to the Clean Energy Project as such debts mature, and any such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; and

(g) there shall occur any other Event of Default specified in a Supplemental Indenture.

*Section 8.02. Accounting and Examination of Records After Default*. (a) The Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and accounts of the Issuer and all other records relating to the Clean Energy Project shall at all times during regular business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.

(b) The Issuer covenants that if an Event of Default shall have happened and shall not have been remedied, the Issuer, upon demand of the Trustee, will account, as if it were the trustee of an express trust, for all Revenues and other moneys, securities and funds pledged or held under this Indenture for such period as shall be stated in such demand.

*Section 8.03. Enforcement of Agreements; Application of Moneys after Default*. (a) The Issuer covenants that, if an Event of Default shall have occurred and be continuing, it shall upon the demand of the Trustee (i) take such additional actions on its part as shall be necessary to cause

all Project Participants to make payments of all amounts due under the Power Supply Contracts to the Trustee, (ii) take such additional actions on its part as shall be necessary to cause the Commodity Swap Counterparty to make payment of all amounts due under the Commodity Swap directly to the Trustee, (iii) take such additional actions on its part as shall be necessary to cause the Interest Rate Swap Counterparty to make payment of all amounts due under the Interest Rate Swap directly to the Trustee, (iv) execute and deliver such additional instruments that may be necessary to establish or confirm its pledge and assignment to the Trustee of its rights and remedies afforded the Issuer under the Power Supply Contracts, and (v) pay over or cause to be paid over to the Trustee any Revenues which have not been paid directly to the Trustee as promptly as practicable after receipt thereof. In addition, to secure its obligations under this Indenture, the Issuer hereby irrevocably pledges and collaterally assigns to the Trustee the Issuer's rights to issue notices (including notices to direct the remarketing of Energy) and to take any other actions that the Issuer is required or permitted to take under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap, and, while an Event of Default has occurred and is continuing under this Indenture, the Trustee is hereby authorized and directed, and shall have the authority, to take any such actions as it deems necessary under the Energy Purchase Agreement, the Power Supply Contracts, the Energy Supplier Guaranty, the Commodity Swap and the Interest Rate Swap. Notwithstanding this authorization, the Issuer shall retain, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights which it has pledged and collaterally assigned to the Trustee in accordance with the foregoing; provided, however, if an Event of Default has occurred and is continuing, the Trustee shall have the right to notify the Issuer to cease exercising such rights and, upon receipt of such notice with a copy provided to the Energy Supplier under the Energy Purchase Agreement, the Project Participants under the Power Supply Contracts, and the Commodity Swap Counterparty under the Commodity Swap, subject to the rights of the Energy Supplier with respect to the Power Supply Contracts as set forth in the Receivables Purchase Provisions, the Trustee shall have exclusive authority to exercise such rights until such time as the Event of Default has been cured pursuant to the terms of this Indenture or the Trustee issues a subsequent notice otherwise. For the avoidance of doubt, the Energy Purchase Agreement, the Power Supply Contracts and the Commodity Swap may be amended at any time for changes in Delivery Points as provided therein, without the consent of the Bondholders, any parties other than those to the relevant agreement, and without the provision of opinions or other process hereunder.

(b) During the continuance of an Event of Default, the Trustee shall apply all moneys, securities, funds and Revenues received by the Trustee pursuant to any right given or action taken under the provisions of this Article in accordance with Article V of this Indenture, after the payment of the reasonable fees, charges, expenses and liabilities of the Fiduciaries (including court costs and the fees and expenses of the Fiduciaries' counsel) payable to or incurred by the Fiduciaries in connection with the performance of their duties and the exercise of their rights hereunder, *provided* that (1) moneys held in the Debt Service Account shall not be used for purposes other than payment of the interest and principal or Redemption Price then due on the Bonds and the payment of Interest Rate Swap Payments then due under the Interest Rate Swap, (2) moneys in the Commodity Swap Payment Fund shall be used first to pay any Commodity Swap Payments then due, (3) moneys held in the General Reserve Fund shall not be used other than for

the payment of the items specified in Section 5.10(a), and (4) moneys held in the Administrative Fee Fund shall not be used other than as specified in Section 5.14.

(c) If and whenever all overdue installments of interest on all Bonds, together with the reasonable charges, expenses and liabilities of the Fiduciaries, and all other sums payable or secured by the Issuer under this Indenture, including the principal and Redemption Price of and accrued unpaid interest on all Bonds which shall then be payable by declaration or otherwise, shall either be paid by or for the account of the Issuer, or provisions satisfactory to the Trustee shall be made for such payment, and all defaults under this Indenture or the Bonds shall be made good or secured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall be made therefor, the Trustee shall pay over to the Issuer all moneys, securities and funds then remaining unexpended in the hands of the Trustee (except moneys, securities and funds deposited or pledged, or required by the terms of this Indenture, particularly Section 5.02, to be deposited or pledged, with the Trustee), and thereupon the Issuer and the Trustee shall be restored, respectively, to their former positions and rights under this Indenture. No such payment over to the Issuer by the Trustee nor restoration of the Issuer and the Trustee to their former positions and rights shall extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

*Section 8.04. Appointment of Receiver*. The Trustee shall have the right, upon the happening of an Event of Default, to apply in an appropriate proceeding for the appointment of a receiver of the Clean Energy Project.

*Section 8.05. Proceedings Brought by Trustee*. (a) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the Trustee, by its agents and attorneys, may proceed, and upon written request of the Holders of not less than a majority in principal amount of the Bonds Outstanding and upon being indemnified to its satisfaction shall proceed, to protect and enforce its rights and the rights of the Holders of the Bonds under this Indenture forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the Issuer as if the Issuer were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under this Indenture.

(b) All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Bonds or the production thereof at the trial or other proceedings, and any such suit or proceedings instituted by the Trustee shall be brought in its name.

(c) The Holders of not less than a majority in principal amount of the Bonds at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, *provided* that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustly prejudicial to the Bondholders not parties to such direction.

(d) Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled to exercise any and all rights and powers conferred in this Indenture and provided to be exercised by the Trustee upon the occurrence of any Event of Default.

(e) Regardless of the happening of an Event of Default, the Trustee shall have power to, but unless requested in writing by the Holders of a majority in principal amount of the Bonds then Outstanding and furnished with reasonable security and indemnity, shall be under no obligation to, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders.

*Section 8.06. Restriction on Bondholder's Action*. (a) No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Indenture or the execution of any trust under this Indenture or for any remedy under this Indenture, unless such Holder (i) shall have previously given to the Trustee written notice of the happening of an Event of Default, as provided in this Article, and the Holders of at least a majority in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, (ii) shall have offered it reasonable opportunity, either to exercise the powers granted in this Indenture or by the laws of the State or to institute such action, suit or proceeding in its own name, and (iii) shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of 60 days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture, except in the manner therein provided; and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and for the equal benefit of all Holders of the Outstanding Bonds, subject only to the provisions of Section 7.02.

(b) Nothing in this Indenture or in the Bonds shall affect or impair the obligation of the Issuer, which is absolute and unconditional, to pay only from the Trust Estate, in accordance with the terms of this Indenture, at the respective dates of maturity and places therein expressed the principal of (and premium, if any) and interest on the Bonds to the respective Holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of its Bond.

*Section 8.07. Remedies Not Exclusive*. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity or by statute on or after the date of execution and delivery of this Indenture.

*Section 8.08. Effect of Waiver and Other Circumstances*. (a) No delay or omission of the Trustee or any Bondholder to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default or be an acquiescence therein; and every power and remedy given by this Article VIII to the Trustee or to the Bondholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

(b) Prior to the declaration of maturity of the Bonds as provided in Section 8.01, the Holders of not less than a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Holders of all of the Bonds waive any past default under this Indenture and its consequences, except a default in the payment of interest on or principal of or premium (if any) on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

*Section 8.09. Notice of Default*. The Trustee shall promptly mail written notice of the occurrence of any Event of Default to each registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of the Issuer.

## ARTICLE IX

## CONCERNING THE FIDUCIARIES

*Section 9.01. Acceptance by Trustee of Duties*. The Trustee accepts the duties and obligations imposed upon it by this Indenture and the trusts hereby created, but only, however, upon the terms and conditions set forth in this Indenture.

*Section 9.02. Paying Agents; Appointment and Acceptance of Duties*. (a) The Issuer shall appoint one or more Paying Agents for the Bonds, and may at any time or from time to time appoint one or more other Paying Agents. All Paying Agents appointed shall have the qualifications set forth in Section 9.13 for a successor Paying Agent. The Trustee is hereby appointed as initial Paying Agent.

(b) Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the Issuer and to the Trustee a written acceptance thereof.

(c) Unless otherwise provided, the principal corporate trust offices of the Paying Agents are designated as the respective offices or agencies of the Issuer for the payment of the interest on and principal or Redemption Price of the Bonds.

*Section 9.03. Responsibilities of Fiduciaries*. (a) The recitals of fact herein and in the Bonds contained shall be taken as the statements of the Issuer and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of this Indenture or of any Bonds issued hereunder or as to the security afforded by this Indenture, and no Fiduciary shall incur any liability in respect thereof.

Furthermore, no Fiduciary shall be responsible for any offering documents (except for information provided by any Fiduciary for inclusion in such offering documents). The Trustee shall, however, be responsible for its representation contained in its certificate of authentication on the Bonds. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys, including bond proceeds, paid by such Fiduciary in accordance with the provisions of this Indenture to the Issuer or to any other Person. No Fiduciary shall be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or undertake any suit or proceeding under this Indenture or to enter any appearance in or defend any suit in respect thereof, or to advance any of its own moneys, expend or risk its own funds or otherwise incur any financial liability unless properly indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other anticipated disbursements, and against all liability except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. To the extent permitted by law, the Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or the performance of any of its duties hereunder unless properly indemnified to its satisfaction. Subject to the provisions of subsection (b), no Fiduciary shall be liable in connection with the performance of its duties hereunder except to the extent determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct. Notwithstanding anything to the contrary, the permissive rights of any Fiduciary to do things enumerated under this Indenture shall not be construed as duties.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Any provision of this Indenture relating to action taken or to be taken by the Trustee or to evidence upon which the Trustee may rely shall be subject to the provisions of this Section 9.03 and Section 9.04.

(c) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in connection with the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(d) Notwithstanding anything to the contrary herein, the Issuer acknowledges and agrees that the Trustee is not acting as the disclosure or dissemination agent for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934 in connection with any notice required to be posted with the Municipal Securities Rulemaking Board via its EMMA system.

*Section 9.04. Evidence on Which Fiduciaries May Act*. (a) Each Fiduciary may conclusively rely upon any notice, direction, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document furnished to it pursuant to any provision of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties and in conformity with the formal requirements of this Indenture. Each Fiduciary may consult with a consultant, accountant or counsel, who may or may not be a consultant, accountant or counsel to the Issuer, and the opinion of such consultant, accountant or counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument.

(b) Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Issuer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Indenture upon the faith thereof; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable. Neither the Trustee, the Bond Registrar, the tender agent, nor the Paying Agent shall be bound to recognize any Person as a Bondholder or to take any action at its request unless its Bond shall be deposited with such entity or satisfactory evidence of the ownership of such Bond shall be furnished to such entity.

(c) The Trustee shall have the right to accept and act upon directions given pursuant to this Indenture, or any other document reasonably relating to the Bonds and delivered using Electronic Means; *provided, however,* that the Issuer shall provide to the Trustee a Written Certificate of the Issuer listing Authorized Officers with the authority to provide such directions and containing specimen signatures of such Authorized Officers, which Written Certificate of the Issuer shall be amended whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee directions using Electronic Means and the Trustee in its discretion elects to act upon such directions, the Trustee's understanding of such directions shall be deemed controlling. The Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such directions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the Written Certificate of the Issuer provided to the Trustee have been sent by such Authorized Officer. The Issuer shall be responsible for ensuring that only Authorized Officers transmit such directions to the Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys issued by the Trustee as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such directions notwithstanding such directions conflict or are

inconsistent with a subsequent written direction. The Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Trustee and that there may be more secure methods of transmitting directions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

*Section 9.05. Compensation*. The Issuer shall pay or cause to be paid to each Fiduciary from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, legal fees and other disbursements, including those of its attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Indenture, in accordance with the agreements made from time to time between the Issuer and the Fiduciary. Subject to the provisions of Section 9.03, the Issuer further agrees, to the extent permitted by applicable law, to indemnify and save each Fiduciary harmless against any liabilities that it may incur in the exercise and performance of its powers and duties hereunder and that are not due to such Fiduciary's negligence or willful misconduct.

*Section 9.06. Certain Permitted Acts*. Any Fiduciary, individually or otherwise, may become the owner of any Bonds, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the Holders of a majority in principal amount of the Bonds then Outstanding. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

*Section 9.07. Resignation of Trustee*. The Trustee may at any time resign and be discharged of the duties created by this Indenture by giving not less than 60 days' written notice to the Issuer and mailing notice thereof to the Holders of Bonds then Outstanding, specifying the date when such resignation shall take effect, and such resignation shall take effect upon the day specified in such notice unless (a) previously a successor shall have been appointed by the Issuer or the Bondholders as provided in Section 9.09, in which event such resignation shall take effect immediately on the appointment of such successor, or (b) a successor shall not have been appointed by the Issuer or the Bondholders as provided in Section 9.09 on such date, in which event such resignation shall not take effect until a successor is appointed.

*Section 9.08. Removal of the Trustee*. The Trustee may be removed with 30 days' prior notice with or without cause by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of the

Issuer. So long as no Event of Default, or an event which, with notice or passage of time, or both, would become an Event of Default, shall have occurred and be continuing, the Trustee may be removed at any time with 30 days' prior Written Notice, with or without cause, by delivery of a Written Certificate of the Issuer to the Trustee with respect to the foregoing. Notwithstanding the foregoing, any such removal of the Trustee shall not be effective until a successor Trustee has been appointed pursuant to Section 9.09.

*Section 9.09. Appointment of Successor Trustee*. (a) In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor Trustee may be appointed by the Issuer by a duly executed written instrument signed by an Authorized Officer.

(b) If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 30 days after the Trustee shall have given to the Issuer written notice as provided in Section 9.07 or within 30 days after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or for any other reason whatsoever, the Trustee or the Holder of any Bond (in any case) may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under the provisions of this Section 9.09 in succession to the Trustee shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least $100,000,000 if there be such a bank with trust powers or trust company or national banking association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

*Section 9.10. Transfer of Rights and Property to Successor Trustee*. Any successor trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Issuer, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the Written Request of the Issuer or of the successor Trustee, at the cost and expense of the Issuer, execute, acknowledge and deliver such instrument of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property, rights, interests and estates held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law,

be executed, acknowledged and delivered by the Issuer. Any such successor Trustee shall promptly notify the Paying Agents of its appointment as Trustee.

*Section 9.11. Merger or Consolidation*. Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, *provided* such company shall be a bank with trust powers or trust company organized under the laws of any state of the United States or a national banking association and shall be authorized by law to perform all the duties imposed upon it by this Indenture and shall meet the qualifications set forth in Section 9.09(c), shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

*Section 9.12. Adoption of Authentication*. In case any of the Bonds contemplated to be issued under this Indenture shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee so authenticating such Bonds and deliver such Bonds so authenticated; and in case any of the said Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is provided, anywhere in said Bonds or in this Indenture, that the certificate of the Trustee shall have.

*Section 9.13. Resignation or Removal of Paying Agent and Appointment of Successor*. (a) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' written notice to the Issuer, the Trustee and the other Paying Agents. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by an Authorized Officer. Any successor Paying Agent shall be appointed by the Issuer and shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, having capital stock, surplus and undivided earnings aggregating at least $50,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

(b) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, at the reasonable cost and expense of the Issuer to the extent such Paying Agent is not acting as the Trustee at the time of such resignation or removal, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

*Section 9.14. Trustee's Reliance*. In the absence of bad faith on its part, the Trustee may conclusively rely, and shall be protected in acting upon any notice, direction, ordinance, resolution, request, consent, order, certificate, report, opinion, bond, statement, 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 the Issuer, and the opinion of such consultant, accountant, or counsel shall be full and complete authorization and protection in respect of any action taken or suffered by Trustee under this Indenture in good faith and in accordance therewith. The Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument. Any request, direction, authority or consent given by the Holders of any Bond shall be conclusive and binding upon all Holders of the same Bond and any Bond issued in its place.

*Section 9.15. Trustee's Liability*. (a) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith, in accordance with the provisions of this Indenture, in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Bonds, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or, except for its negligence or willful misconduct, exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Bonds. In no event shall the Trustee be liable for incidental, special, consequential or punitive damages or penalties (including, but not limited to, lost profits).

(b) The Trustee shall not be deemed to have knowledge of an Event of Default except for those Events of Default in Sections 8.1(a) and (b) unless a Responsible Officer of the Trustee shall have actual knowledge of such Event of Default. As used herein, "actual knowledge" shall mean the actual fact or statement of knowing without any independent duty to make any investigation with regard thereto.

(c) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All rights, benefits, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

(d) Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Issuer, and such Written Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Written Instrument, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in connection with the performance or exercise of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(f) The Trustee shall not be responsible for any recital in this Indenture or on the Bonds (except with respect to the certificate of the Trustee endorsed on the Bonds) or for insuring any

property conveyed or collecting any insurance monies, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto, or instruments of further assurance, or for the sufficiency of the security for the Bonds, or for the investment of monies as herein permitted (except that no investment shall be made except in compliance with Section 6.02 and Section 6.03 hereof), or for the recording or re-recording, filing or re-filing of this Indenture, or any supplement or amendment thereto, or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof. Except as specifically provided in this Indenture, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer, but the Trustee may require of the Issuer full information and advice as to the performance of such covenants. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers. Under no circumstances shall the Trustee in any of its capacities hereunder be liable in its individual capacity for the obligations evidenced by the Bonds or be subject to any personal liability or accountability by reason of the issuance of this Bond or in respect of any undertakings by the Trustee under this Indenture. In accepting the trust hereby created, the Trustee acts solely as Trustee for the holders of the Bonds and not in its individual capacity, and all persons, including without limitation the holders of the Bonds and the Issuer, having any claim against the Trustee arising from this Indenture shall look only to the Funds and Accounts held by the Trustee hereunder for payment except as otherwise provided herein.

(g) To the extent permitted by law, the Issuer shall indemnify the Trustee for, and hold it harmless against, any loss, damage, claim, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of any of its duties hereunder, except to the extent that any such loss, damage, claim, liability or expense was due to Trustee's own negligence or willful misconduct.

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

*Section 9.16. Trustee's Agents or Attorneys*. The Trustee may execute any of its trusts or powers under this Indenture or perform any of its duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

*Section 9.17. Notice of Lien Filings*. Notwithstanding anything to the contrary contained in this Indenture, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, if applicable. In addition, unless the Trustee shall have received Written Notice from the Issuer that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected (i) in relying on such

initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 9.17 and (ii) in filing any continuation statements in the same filing offices as the initial filings were made. If applicable, the Trustee shall, upon the prior Written Direction of the Issuer, cause to be filed, in accordance with such instructions, a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, for which the Issuer has directed a continuation statement to be filed, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered with such Written Direction of the Issuer to the Trustee. The Issuer shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including payment of any filing fees, and shall give the Trustee any assistance it reasonably requests in order to enable the Trustee to file continuation statements for the lien established by this Indenture.

## ARTICLE X

## SUPPLEMENTAL INDENTURES

*Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders*. The Issuer and the Trustee may from time to time, subject to the conditions and restrictions in this Indenture contained, enter into a Supplemental Indenture or Indentures, in form satisfactory to the Trustee, which shall thereafter form a part hereof, without the consent of the Bondholders for any one or more of the following purposes:

(a) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Indenture;

(b) To insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(c) To make any other modification or amendment of this Indenture which the Trustee shall in its sole discretion determine will not have a material adverse effect on the Bondholders or the Interest Rate Swap Counterparty; and in making such a determination, the Trustee shall be entitled to rely conclusively upon an Opinion of Counsel and/or certificates of investment bankers or other financial professionals or consultants;

(d) To add to the covenants and agreements of the Issuer in this Indenture, other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(e) To add to the limitations and restrictions in this Indenture, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) To authorize the issuance of Refunding Bonds;

(g) To authorize, in compliance with all applicable law, Bonds to be issued in the form of coupon Bonds registrable as to principal only and, in connection therewith, specify and determine the matters and things relative to the issuance of such coupon Bonds, including provisions relating to the timing and manner of provision of any notice required to be given hereunder to the Holders of such coupon Bonds, which are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first authentication and delivery of such coupon Bonds;

(h) To provide for the execution of a Commodity Swap in accordance with the provisions hereof;

(i) To provide for a Liquidity Facility and Liquidity Facility Provider in accordance with the provisions hereof;

(j) To confirm, as further assurance, any security interest, pledge or assignment under, and the subjection to any security interest, pledge or assignment created or to be created by, this Indenture of the Revenues or of any other moneys, securities or funds;

(k) To add to the Events of Default in this Indenture additional Events of Default;

(l) To add to this Indenture any provisions relating to the application of interest earnings on any Fund or Account under this Indenture required by law to preserve the exclusion of interest on Bonds issued from gross income for federal income tax purposes;

(m) To evidence the appointment of a successor Trustee; or

(n) If the Bonds affected by such change are rated by a Rating Agency, to make any change upon receipt of a Rating Confirmation with respect to the Bonds so affected.

Each Supplemental Indenture authorized by this Section shall become effective as of the date of its execution and delivery by the Issuer and the Trustee or such later date as shall be specified in such Supplemental Indenture.

A Supplemental Indenture will be deemed to not materially adversely affect the Holders of any Bonds that are subject to mandatory tender on or before the effective date of the Supplemental Indenture.

*Section 10.02. Supplemental Indentures Effective With Consent of Bondholders*. At any time or from time to time, subject to Section 10.03(e) and Section 11.05(b), a Supplemental Indenture may be entered into by the Issuer and the Trustee subject to notice to and consent by Bondholders in accordance with and subject to the provisions of Article XI, which Supplemental

Indenture, upon compliance with the provisions of said Article XI, shall become fully effective in accordance with its terms as provided in said Article XI.

*Section 10.03. General Provisions*. (a) This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article X and Article XI. Nothing contained in this Article X or Article XI shall affect or limit the right or obligation of the Issuer to adopt, make, do, execute, acknowledge or deliver any resolution, act or other instrument pursuant to the provisions of Section 7.04 or the right or obligation of the Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in this Indenture it is provided shall be delivered to said Fiduciary.

(b) Any Supplemental Indenture referred to and permitted or authorized by Section 10.01 may be entered into between the Issuer and the Trustee without the consent of any of the Bondholders, but shall become effective only on the conditions, to the extent and at the time provided in said Section. A copy of every Supplemental Indenture shall be accompanied by an Opinion of Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture, and is valid and binding upon the Issuer; provided, that such Opinion of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy.

(c) The Trustee is hereby authorized to enter into any Supplemental Indenture referred to and permitted or authorized by Section 10.01 or Section 10.02 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an Opinion of Counsel that such Supplemental Indenture is authorized or permitted by the provisions of this Indenture.

(d) No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto; *provided, however* this section shall not affect the rights of the Holders or the Issuer to remove the Trustee as provided in Section 9.08 herein.

(e) Notwithstanding anything in this Article X to the contrary, no Supplemental Indenture (or other amendment to this Indenture) shall change or modify (i) the order of priority of deposits set forth in Section 5.05(a), (ii) the priority of the application of funds following an Event of Default as set forth in Section 8.03, (iii) the definition of Operating Expenses, (iv) any of the rights or interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) or the Energy Supplier, as purchaser under the Receivables Purchase Provisions, granted herein or in the Commodity Swap, the Interest Rate Swap or the Receivables Purchase Provisions, as the case may be, or (v) the provisions of Section 5.04(b) regarding the sale by the Trustee of Put Receivables (A) in each case unless the prior written consent of the Commodity Swap Counterparty has been obtained, and the Commodity Swap Counterparty shall have full right to

enforce this provision, and (B) in the case of clause (iv) of this Section 10.03(e), unless the prior written consent of the Interest Rate Swap Counterparty and/or the Energy Supplier, as applicable, has been obtained.

## ARTICLE XI

## AMENDMENTS

*Section 11.01. Mailing*. Any provision in this Article XI for the mailing of a notice or other paper to Bondholders shall be fully complied with if it is mailed postage prepaid only (a) to each registered owner of Bonds then Outstanding at its address, if any, appearing upon the registry books of the Issuer, and (b) to the Trustee.

*Section 11.02. Powers of Amendment*. Any modification or amendment of this Indenture and of the rights and obligations of the Issuer and of the Holders of the Bonds thereunder may be made by a Supplemental Indenture, subject to Section 10.03(e), with the written consent given as provided in Section 11.03(a) of the Holders of not less than a majority in principal amount of Outstanding Bonds, and (b) in case the modification or amendment changes the terms of any Sinking Fund Installment, of the Holders of not less than a majority in principal amount of Outstanding Bonds of the particular maturity entitled to such Sinking Fund Installment; *provided, however,* that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like maturity remain Outstanding (or have become subject to mandatory purchase) the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section; and *provided further, however,* that if such modification or amendment would adversely affect the Interest Rate Swap Counterparty, such modification or amendment shall be subject to the prior written consent of the Interest Rate Swap Counterparty. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, the Bonds shall be deemed to be affected by a modification or amendment of this Indenture if the same adversely affects or diminishes the rights of the Holders of Bonds in any material respect. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment Bonds would be materially affected by any modification or amendment of this Indenture and any such determination shall be binding and conclusive on the Issuer and all Holders of Bonds. For purposes of this Section, the Holders of any Bonds may include the initial Holders thereof, regardless of whether such Bonds are being held for resale.

*Section 11.03. Consent of Bondholders*. The Issuer and the Trustee may at any time enter into a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 11.02 to take effect when and as provided in this Section 11.03. A copy of such

Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Issuer to Bondholders (but failure to mail such copy and request shall not affect the validity of the Supplemental Indenture when consented to as in this Section 11.03 provided). Such Supplemental Indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of Holders of the percentages of Outstanding Bonds specified in Section 11.02, subject to Section 11.05(b), (b) the written consent of the Interest Rate Swap Counterparty if required by Section 11.02, and (c) an Opinion of Counsel stating that such Supplemental Indenture has been duly and lawfully executed by the Issuer in accordance with the provisions of this Indenture, is authorized or permitted by this Indenture, and is valid and binding upon the Issuer; *provided, that* such Opinion(s) of Counsel may take customary exceptions, including as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, receivership, debt adjustment, moratorium, reorganization, arrangement, fraudulent conveyance or other similar laws relating to or affecting creditors' rights generally, the application of equitable principles, the exercise of judicial discretion, limitations on legal remedies against public entities in the State, and the valid exercise of the sovereign police powers of the State and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy. For purposes of clause (a) of the preceding sentence, the written consent of the Bondholder shall be deemed to have been received if the amendment is expressly referred to in the Supplemental Indenture authorizing such Bonds and in the text of such Bonds and such Bonds recite that such Bondholder shall be deemed to have consented to such amendments by accepting such Bonds. Otherwise, each such consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 12.02. A certificate or certificates executed by the Trustee and filed with the Trustee and the Issuer stating that it has examined such proof and that such proof is sufficient in accordance with Section 12.02 shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates of the Trustee. Any such consent shall be irrevocable and shall be binding upon the Holder of the Bonds giving such consent and, anything in Section 12.02 to the contrary notwithstanding, upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice of such consent). At any time after the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Indenture (or have deemed to have consented to such Supplemental Indenture), the Trustee shall make and file with the Trustee and the Issuer a written statement that the Holders of such required percentages of Bonds have consented to, such Supplemental Indenture. Such written statements shall be conclusive that such consents have been received. At any time thereafter, notice stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture entered into by the Issuer and the Trustee on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in this Section 11.03, may be given to Bondholders by the Trustee by mailing such notice to Bondholders (but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 11.03 provided). A record, consisting of the certificates or statements required or permitted by this Section 11.03 to be made by the Trustee, shall be proof of the matters therein stated.

*Section 11.04. Notifications by Unanimous Consent*. The terms and provisions of this Indenture and the rights and obligations of the Issuer and of the Holders of the Bonds thereunder may be modified or amended in any respect upon the execution of a Supplemental Indenture by the Trustee and the Issuer, the consent of the Holders of all of the Bonds then Outstanding (such consent to be given as provided in Section 11.03), and the consent of the Interest Rate Swap Counterparty if required by Section 11.02; *provided, however,* that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary or any of the provisions referenced in Section 10.03(e) without the filing with the Trustee of the written assent thereto of such Fiduciary or the Commodity Swap Counterparty, respectively, in addition to the consent of the Bondholders.

*Section 11.05. Exclusion of Bonds*. (a) Bonds owned or held by or for the account of the Issuer shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI, and the Issuer shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article XI. At the time of any consent or other action taken under this Article XI, the Issuer shall furnish the Trustee a certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

(b) Bonds for which a Bondholder has submitted a notice of abstention in response to a request for consent received pursuant to Section 11.03 shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article XI with respect to any Supplemental Indenture to be entered into by the Issuer and the Trustee; *provided,* that, such notice of abstention shall not apply with respect to any proposed amendments of Section 8.01.

*Section 11.06. Notation on Bonds*. Bonds authenticated and delivered after the effective date of any action taken as provided in Article X or this Article XI may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the Issuer and the Trustee as to such action, and in that case upon demand of the Holder of any Bond Outstanding at such effective date and presentation of its Bond for the purpose at the principal corporate trust office of the Trustee or upon any transfer or exchange of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer or exchange by the Trustee as to any such action. If the Issuer or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Issuer to conform to such action shall be prepared, authenticated and delivered, and upon demand of the Holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder, for Bonds of the same maturity then Outstanding, upon surrender of such Bonds.

## ARTICLE XII

## MISCELLANEOUS

*Section 12.01. Defeasance*. (a) If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, and

interest due or to become due thereon, at the times and in the manner stipulated in the Bonds and in this Indenture and shall pay or cause to be paid all amounts due or to become due to the Interest Rate Swap Counterparty under the Interest Rate Swap, then the pledge of all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds; *provided, however,* that this Indenture shall not be discharged until (i) the Issuer shall have paid and satisfied all claims, charges and expenses that constitute Operating Expenses hereunder, (ii) the Trustee shall have received an Opinion of Counsel to the effect that all conditions precedent to the satisfaction and discharge of this Indenture have been fulfilled and (iii) receipt by the Trustee of a Rating Confirmation. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by the Issuer to be prepared and filed with the Issuer and, upon the request of the Issuer, shall execute and deliver to the Issuer all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to the Issuer all moneys or securities held by them pursuant to this Indenture which are not required for the payment of principal or Redemption Price, if applicable, on Bonds not theretofore surrendered for such payment or redemption. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of any Outstanding Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Indenture, such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and all covenants, agreements and obligations of the Issuer to the Holders of such Bonds shall thereupon cease, terminate and be discharged and satisfied except for remaining rights of registration of transfer and exchange of Bonds.

(b) Bonds or interest installments for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Paying Agents (through deposit by the Issuer of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a). In addition, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) upon compliance with the provisions of subsection (c).

(c) Subject to the provisions of subsection (d) of this Section, any Outstanding Bonds shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Issuer shall have given to the Trustee irrevocable written instructions accepted in writing by the Trustee to mail as provided in Article IV notice of redemption of such Bonds (other than Bonds which have been purchased by the Trustee at the direction of the Issuer or purchased or otherwise acquired by the Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of such notice of redemption) on said date, (ii) there shall have been deposited with the Trustee either moneys (including moneys withdrawn and deposited pursuant to Section 5.07(g)) in an amount which shall be sufficient, or Defeasance Securities (including any Defeasance Securities issued or held in book entry form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or Redemption

Price, if applicable, and interest due and to become due on said Bonds (with such interest being calculated at the Maximum Rate with respect to any Bonds with interest rates that are not fixed to their redemption or maturity date, as applicable) on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding 60 days, the Issuer shall have given the Trustee in form satisfactory to it irrevocable written instructions to mail, as soon as practicable, a notice to the Holders of such Bonds at their last addresses appearing upon the registry books at the close of business on the last Business Day of the month preceding the month for which notice is mailed that the deposit required by (ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section 12.01 and stating such maturity or redemption date upon which moneys are expected, subject to the provisions of subsection (d) of this Section 12.01, to be available for the payment of the principal or Redemption Price, if applicable, on said Bonds (other than Bonds which have been purchased by the Trustee at the direction of the Issuer or purchased or otherwise acquired by the Issuer and delivered to the Trustee as hereinafter provided prior to the mailing of the notice of redemption referred to in clause (i)). Any notice of redemption mailed pursuant to the preceding sentence with respect to Bonds which constitute less than all of the Outstanding Bonds of any maturity shall specify the letter and number or other distinguishing mark of each such Bond. The Trustee shall, as and to the extent necessary, apply moneys held by it pursuant to this Section 12.01 to the retirement of said Bonds in amounts equal to the unsatisfied balances (determined as provided in Section 5.10(c)) of any Sinking Fund Installments with respect to such Bonds, all in the manner provided in this Indenture. The Trustee shall, if so directed by the Issuer (A) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (B) prior to the mailing of the notice of redemption referred to in clause (i) above with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, apply moneys deposited with the Trustee in respect of such Bonds and redeem or sell Defeasance Securities so deposited with the Trustee and apply the proceeds thereof to the purchase of such Bonds and, the Trustee shall immediately thereafter cancel all such Bonds so purchased; *provided, however,* that the moneys and Defeasance Securities remaining on deposit with the Trustee after the purchase and cancellation of such Bonds (or the deemed cancellation thereof) shall be sufficient to pay when due the Principal Installment or Redemption Price, if applicable, and interest due or to become due on all Bonds (calculated as described above), in respect of which such moneys and Defeasance Securities are being held by the Trustee on or prior to the redemption date or maturity date thereof, as the case may be. If, at any time (1) prior to the maturity date of Bonds deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (2) prior to the mailing of the notice of redemption referred to in clause (i) with respect to any Bonds deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, the Issuer shall purchase or otherwise acquire any such Bonds and deliver such Bonds to the Trustee prior to their maturity date or redemption date, as the case may be, the Trustee shall immediately cancel all such Bonds so delivered; such delivery of Bonds to the Trustee shall be accompanied by directions from the Issuer to the Trustee as to the manner in which such Bonds are to be applied against the obligation of the Trustee to pay or redeem Bonds deemed paid in accordance with this Section 12.01. The directions given by the Issuer to the Trustee referred to in the preceding sentences shall also specify the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to

pay Bonds deemed paid in accordance with this Section 12.01 upon their maturity date or dates and the portion, if any, of such Bonds so purchased or delivered and cancelled or deemed cancelled to be applied against the obligation of the Trustee to redeem Bonds deemed paid in accordance with this Section 12.01 on any date or dates prior to their maturity. In the event that on any date as a result of any purchases, acquisitions and cancellations or deemed cancellations of Bonds as provided in this Section 12.01 the total amount of moneys and Defeasance Securities remaining on deposit with the Trustee under this Section 12.01 is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of the remaining Bonds in order to satisfy clause (ii) of this subsection (c) of Section 12.01, the Trustee shall, if requested by the Issuer, pay the amount of such excess to the Issuer free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Except as otherwise provided in subsections (c) and (d) of this Section 12.01, neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Bonds; *provided* that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (x) to the extent such cash will not be required at any time for such purpose, shall be paid over to the Issuer as received by the Trustee, free and clear of any trust, lien or pledge securing said Bonds or otherwise existing under this Indenture, and (y) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Qualified Investments maturing at times and in amounts sufficient to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Issuer, as received by the Trustee, free and clear of any trust, lien, security interest, pledge or assignment securing said Bonds or otherwise existing under this Indenture. Notwithstanding anything contained herein to the contrary, the Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against Defeasance Securities or the principal and interest received on Defeasance Securities.

(d) Anything in this Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of any of the Bonds which remain unclaimed for six years (or, if shorter, one Business Day before such moneys would escheat to the State under then applicable State law) after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for six years after the date of deposit of such moneys if deposited with the Fiduciary after the said date when such Bonds became due and payable, shall, at the Written Request of the Issuer, be repaid by the Fiduciary to the Issuer, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Bondholders shall look only to the Issuer for the payment of such Bonds; *provided, however,* that before being required to make any such payment to the Issuer the Fiduciary shall, at the expense of the Issuer, cause to be published at least twice, at an interval of not less than seven days between publications, in the Authorized Newspaper, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the first publication of such notice, the balance of such moneys then unclaimed will be returned to the Issuer.

*Section 12.02. Evidence of Signatures of Bondholders and Ownership of Bonds*. (a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and, except as otherwise provided in Section 11.03, shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of (1) the execution of any such instrument, or of an instrument appointing any such attorney, or (2) the holding by any Person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(i) The fact and date of the execution by any Bondholder or its attorney of such instruments may be proved by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature, guarantee, certificate or affidavit shall also constitute sufficient proof of its authority.

(ii) The amount of Bonds transferable by delivery held by any Person executing any instrument as a Bondholder, the date of holding such Bonds, and the numbers and other identification thereof, may be proved by a certificate, which need not be acknowledged or verified, in form satisfactory to the Trustee, executed by the Trustee or by a member of a financial firm or by an officer of a bank, trust company, insurance company, or financial corporation or other depository wherever situated, showing at the date therein mentioned that such Person exhibited to such member or officer or had on deposit with such depository the Bonds described in such certificate. Such certificate may be given by a member of a financial firm or by an officer of any bank, trust company, insurance company or financial corporation or depository with respect to Bonds owned by it, if acceptable to the Trustee. In addition to the foregoing provisions, the Trustee may from time to time make such reasonable regulations as it may deem advisable permitting other proof of holding of Bonds transferable by delivery.

(b) The ownership of Bonds registered other than to bearer and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

(c) Any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or any Fiduciary in accordance therewith.

*Section 12.03. Moneys Held for Particular Bonds*. The amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Bonds entitled thereto.

*Section 12.04. Preservation and Inspection of Documents*. All documents received by any Fiduciary under the provisions of this Indenture shall be retained in its possession and shall at all times during regular business hours (upon reasonable prior written notice) be subject to the inspection of the Issuer, any other Fiduciary, and any Bondholder and their agents and their representatives, any of whom may make copies thereof, subject to such reasonable regulations as such Fiduciary may from time to time determine to be advisable or required by law.

*Section 12.05. Parties Interested Herein*. Nothing in this Indenture expressed or implied, except for the rights and interests of the Commodity Swap Counterparty, the Interest Rate Swap Counterparty (if any) and the Energy Supplier, as purchaser under the Receivables Purchase Provisions, as described in Section 10.03(e), and the pledge of the Commodity Swap Payment Fund granted to the Commodity Swap Counterparty, is intended or shall be construed to confer upon, or to give to, any Person or corporation, other than the Issuer, the Fiduciaries, the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation thereof; and, except as provided in Section 10.03(e), all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Fiduciaries, the Holders of the Bonds and the Interest Rate Swap Counterparty.

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

*Section 12.07. Publication of Notice; Suspension of Publication*. (a) Any publication to be made under the provisions of this Indenture in successive weeks or on successive dates may be made in each instance upon any Business Day of the week and need not be made in the same Authorized Newspaper for any or all of the successive publications but may be made in a different Authorized Newspaper.

*Section 12.08. Publication of Notice; Suspension of Publication*. (a) Any publication to be made under the provisions of this Indenture in successive weeks or on successive dates may be made in each instance upon any Business Day of the week and need not be made in the same Authorized Newspaper for any or all of the successive publications but may be made in a different Authorized Newspaper.

(b) If, because of the temporary or permanent suspension of the publication or general circulation of any Authorized Newspaper or for any other reason, it is impossible or impractical to publish any notice pursuant to this Indenture in the manner herein provided, then such publication in lieu thereof as shall be made by the Issuer with the written approval of the Trustee shall constitute a sufficient publication of such notice.

*Section 12.09. Severability of Invalid Provisions*. If any one or more of the covenants or agreements provided in this Indenture on the part of the Issuer or any Fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Indenture.

*Section 12.10. 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 12.11. Notices*. (a) Except as otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Indenture shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid (or sent by Electronic Means, confirmed by mail, as aforesaid), as follows:

| | |
|---|---|
| If to the Issuer: | California Community Choice Financing Authority<br>1125 Tamalpais Avenue<br>San Rafael, California 94901<br>Attention: Treasurer/Controller<br>Telephone: (415) 464-6037<br>Email: SeriesB@CCCFA.org<br><br>With a copy to:<br><br>East Bay Community Energy Authority<br>1999 Harrison Street, Suite 800<br>Oakland, California 94612<br>Email: powernotices@ebce.org |
| If to the Trustee, Paying Agent, the Bond Registrar, the Custodian or the Calculation Agent for the Index Rate Bonds: | The Bank of New York Mellon Trust Company, N.A.<br>4655 Salisbury Road, Suite 300<br>Jacksonville, Florida 32256<br>Telephone: (904) 645-1923<br>Attention: Richard Dillard<br>Email: Richard.Dillard@bnymellon.com |

| | |
|---|---|
| If to the Calculation Agent for Bonds bearing interest at a CPI Index Rate: | Morgan Stanley & Co., LLC<br>1585 Broadway<br>New York, NY 10036<br>Telephone: (212) 761-4000<br>Attention: agystruct@morganstanley.com<br><br>With a copy to:<br><br>Keith Cackowsky<br>Morgan Stanley Energy Structuring, L.L.C.<br>1585 Broadway<br>New York, NY 10036<br>Telephone: (914) 225-1548<br>Attention: Keith.Cackowsky@morganstanley.com |

or to such other Person or addresses as the respective party hereafter designates in writing to the Issuer and the Trustee.

(b) The Issuer may, by Written Direction to the Trustee, permit a Project Participant that is a Member to deliver to the Trustee on behalf of the Issuer any notices, requests, demands and other communications required or permitted to be delivered by the Issuer under this Indenture. Such Written Direction shall contain a certificate identifying the Authorized Officers of such Project Participant for purposes of delivery of notices under this Indenture. The Trustee shall treat all such notices received from the Project Participant as if they were delivered by the Issuer, unless an Event of Default has occurred and is continuing under this Indenture, in which case any notices from such Project Participant shall be disregarded by the Trustee and of no force or effect. The Issuer may at any time rescind and annul the Written Direction permitting such Project Participant to deliver notices hereunder on behalf of the Issuer by delivering a Written Direction to the Trustee stating that such permission has been rescinded and annulled.

*Section 12.12. Notices to Rating Agencies*. The Issuer shall provide to each Rating Agency rating the Bonds at the time notice of any amendment to this Indenture, the Energy Purchase Agreement, any Commodity Swap, any Power Supply Contract, and Debt Service Fund Agreement or any other document relating to the Bonds or the Clean Energy Project.

*Section 12.13. Counterparts*. This Indenture may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

*Section 12.14. Waiver of Jury Trial*. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS INDENTURE OR ANY OTHER TRANSACTION DOCUMENT, THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY, OR THE RELATIONSHIP ESTABLISHED HEREUNDER OR THEREUNDER, AND AGREES THAT ANY SUCH PROCEEDING SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

*Section 12.15. Electronic Signatures*. Each of the parties hereto agrees that the transaction consisting of this agreement may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this agreement using an electronic signature, it is signing, adopting, and accepting this agreement and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this agreement in a usable format.

[*Signature page follows*]

IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Indenture to be signed in its own name and on its behalf by an Authorized Officer, and as evidence of its acceptance of the trusts hereby created, The Bank of New York Mellon Trust Company, N.A., the duly authorized Trustee, has caused this Indenture to be signed in its name and on its behalf by one of its officers duly authorized and its corporate seal to be hereunto affixed, attested by another of its officers duly authorized, all as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By:_____
Name: _____
Title: _____

[SEAL]

ATTEST:

By: _____
Name: _____
Title: _____

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

By:_____
Name: _____
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 the Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED
No. ___

REGISTERED
$_____

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**
**CLEAN ENERGY PROJECT REVENUE BOND**
**SERIES 2022[A-1 (TERM RATE)][A-2 ([SIFMA][SOFR] INDEX RATE)]**

| MATURITY DATE | DATED DATE | CUSIP | [INTEREST RATE][APPLICABLE SPREAD/FACTOR] | INTEREST RATE MODE |
|---|---|---|---|---|
| | _____, 2022 | | | |

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

California Community Choice Financing Authority (the *"Issuer"*), a joint powers authority, organized and existing pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "*Act*"), and the Joint Powers Agreement, dated June 25, 2021, as amended from time to time, for value received, hereby promises to pay in lawful money of the United States of America, to the Registered Owner identified above, or registered assigns, on the Maturity Date stated above, unless this Bond shall have been called for redemption (in whole or in part) and payment of the redemption price shall have been duly made or provided for, upon presentation and surrender hereof, the principal amount identified above, and to pay, in the manner and from the source hereinafter provided, to the Registered Owner hereof interest on the balance of said principal amount from time to time remaining unpaid at the rate determined as provided in the Indenture identified below, until payment in full of such principal amount. The initial Interest Rate Period, as defined in the Indenture, for this Bond is set out in the Indenture. The Interest Rate Period for this Bond may be changed from time to time as provided in the Indenture.

*The following paragraph shall be inserted in the Series 2022A-1 Bonds:*

> This Bond bears interest from the Dated Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at the rate per annum set forth above, computed on the basis of a 360-day year consisting of 12 thirty-day months, payable on [_____] and [_____] of each year, commencing [_____], 2022.

*The following paragraph shall be inserted in the [Series 2022A-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 Dated Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a SIFMA Index Rate equal to the sum of (a) the SIFMA Index as of the day of determination plus (b) the Applicable Spread of [_____] basis points ([____]%) (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

*The following paragraph shall be inserted for any [SOFR Index Rate] Bonds, and the phrase "SOFR Index Rate" shall be inserted under the caption "Interest Rate" immediately below the title of such Bond:*

> This Bond bears interest from the Date Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a SOFR Index Rate equal to the sum of (a) the product of the Applicable Factor of [_____] and SOFR as of the day of determination, plus (b) the Applicable Spread of [_____] basis points ([____]%) (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

*The following paragraph shall be inserted for any CPI Index Rate Bonds, and the phrase "CPI Index Rate" shall be inserted under the caption "Interest Rate" immediately below the title of such Bond:*

> This Bond bears interest from the Dated Date specified above, or from the most recent interest payment date to which interest has been paid or duly provided for, at a CPI Index Rate determined

accordance with Section 2.14 of the Indenture (but not more than the Maximum Rate of 12% per annum), computed on the basis of a 360-day year of twelve 30-day calendar months and payable on the first Business Day of each Month, commencing on the first Business Day of 20[___].

The Issuer is obligated to pay the principal, Redemption Price of, and interest on this Bond solely from the Trust Estate as defined in and in accordance with the provisions of the Trust Indenture, dated as of [_____] 1, 2022, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (said trustee and any successor thereto under the Indenture being herein referred to as the "*Trustee*"), as the same may be amended and supplemented from time to time (the "*Indenture*").

This Bond is one of the Clean Energy Project Revenue Bonds of the Issuer initially issued in [two] separate series (collectively, the *"Bonds"*) under and by virtue of the Act and under and pursuant to the Indenture for the purpose of providing funds to pay the Cost of Acquisition of the Issuer's Clean Energy Project. The aggregate principal amount of Bonds issued pursuant to the Indenture is limited to $[_____]. This Bond is one of the Series of Bonds designated as "Clean Energy Project Revenue Bonds, Series 2022[B-1 (Term Rate)][B-2 ([SIFMA][SOFR] Index Rate)]," dated as of the Dated Date identified above. Except as otherwise provided herein and unless the context clearly indicates otherwise, words and phrases used herein shall have the same meanings as such words and phrases in the Indenture.

All Bonds are and will be equally and ratably secured by the pledge and covenants made in the Indenture, except as otherwise expressly provided or permitted in or pursuant to the Indenture.

THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER AND THE PRINCIPAL AND REDEMPTION PRICE OF, AND INTEREST ON, THIS BOND ARE PAYABLE SOLELY FROM THE TRUST ESTATE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE ISSUER, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PROVIDED THEREFOR UNDER THE INDENTURE. THE ISSUER SHALL NOT BE OBLIGATED TO PAY THE PRINCIPAL OR THE REDEMPTION PRICE OF OR INTEREST ON THE BONDS EXCEPT FROM THE FUNDS PROVIDED THEREFOR UNDER THE INDENTURE AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. THE ISSUER HAS NO TAXING POWER.

Copies of the Indenture are on file at the office of the office of Trustee in Jacksonville, Florida, and reference to the Indenture and the Act is made for a description of the pledge and

covenants securing the Bonds, the nature, manner and extent of enforcement of such pledge and covenants, the terms and conditions upon which the Bonds are issued, and a statement of the rights, duties, immunities and obligations of the Issuer and of the Trustee. Such pledge and other obligations of the Issuer under the Indenture may be discharged at or prior to the maturity or redemption of the Bonds upon the making of provision for the payment thereof on the terms and conditions set forth in the Indenture.

The Issuer has established a book-entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, the Securities Depository will be the registered owner of this Bond. By acceptance of a confirmation of purchase, delivery or transfer, a Beneficial Owner shall be deemed to have agreed to this arrangement. The Securities Depository, as registered owner of this Bond, shall be treated as the Owner of it for all purposes.

The Issuer will pay the principal or Redemption Price of and interest on this Bond solely from the Trust Estate in accordance with the provisions of the Indenture. Interest will accrue on the unpaid portion of the principal of this Bond from the last Interest Payment Date for which interest has been paid or duly provided for or if no interest has been paid or duly provided for, from the Dated Date of this Bond, until the entire principal amount of this Bond is paid or duly provided for, and such interest shall be paid in the manner and on the Interest Payment Dates specified in the Indenture.

This Bond may be transferred or exchanged as provided in the Indenture.

To the extent and in the respects permitted by the Indenture, the Indenture may be modified or amended in the manner and subject to the conditions and exceptions prescribed in the Indenture. Certain such modifications and amendments may be made without the consent of the Owners of the Bonds to the extent provided in the Indenture.

The Owner or Beneficial Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the pledge or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in, or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

The Bonds are subject to tender or redemption prior to maturity upon the circumstances, at the times, in the amounts, upon payment of the amounts, with the notice, upon the other terms and provisions and with the effect set forth in the Indenture.

No director, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of any principal or Redemption Price of or interest on the Bonds or any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of the Indenture.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of California or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed in due time, form and manner, and that the issue of Bonds,

together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by said Constitution and statutes.

This Bond shall not be valid until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the California Community Choice Financing Authority has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Chair, and attested by the manual or facsimile signature of its Secretary, all as of the Dated Date specified above.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By:_____
Chair

ATTEST:

_____
Secretary

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION AND REGISTRATION]**

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the Clean Energy Project Revenue Bonds, Series 2022[A-1 (Term Rate)][A-2 ([SIFMA][SOFR] Index Rate)], of California Community Choice Financing Authority.

Date of registration and authentication: _____, 20[___].

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

By:_____
Name: _____
Title: _____

Customary abbreviations may be used in the name of a Bondholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/T/M/A (= Uniform Transfers to Minors Act).

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

| | | | |
|---|---|---|---|
| TEN COM | — | as tenants in common | UNIF TRAN MIN ACT |
| TEN ENT | — | as tenants by the entirety | _____ Custodian _____ |
| JT TEN | — | as joint tenants with right | (Cust) (Minor) |

of survivorship and not as under Uniform Transfers to Minors Act of
tenants in common _____
(State)

Additional abbreviations may also be used though not in list above.

**[FORM OF ASSIGNMENT]**

For Value Received, the undersigned sells, assigns and transfers unto

_____

Please Insert Social Security or
Other Identifying Number of Assignee

(Name and Address of Assignee)

_____

the within Bond of the California Community Choice Financing Authority, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Date: _____

SIGNATURE GUARANTEED:

_____

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other "signature guarantee program" as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

## EXHIBIT B

### FORM OF INDEX RATE DETERMINATION CERTIFICATE/CONTINUATION NOTICE

Re: California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022A-2 ([SIFMA][SOFR] Index Rate) (the *"Bonds"*)

Reference is made to Section 2.09 [and Section 2.14] of the Trust Indenture, dated as of [_____] 1, 2022 (the *"Indenture"*), between the California Community Choice Financing Authority (the *"Issuer"*) and The Bank of New York Mellon Trust Company, N.A., as trustee (the *"Trustee"*), relating to the above captioned Bonds. Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Indenture.

The undersigned Authorized Representative of the Issuer hereby notifies the Trustee and the Rating Agencies as follows with respect to the Index Rate Period commencing on the date hereof:

*Include the following text separately for each Series of Index Rate Bonds:*

(i) the Index Rate shall be the [SIFMA/SOFR] Index Rate and the Index Rate Period shall be _____;

(ii) if the Index Rate shall be the SOFR Index Rate, (A) the SOFR Index shall be the "Secured Overnight Financing Rate" reported on the NY Federal Reserve's Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing the SOFR Index as of the third Business Day preceding the [Initial Issue Date][Index Rate Reset Date], which will be used to calculate interest for the SOFR Effective Period beginning on such [Initial Issue Date][Index Rate Reset Date] (the "*SOFR Effective Date*") (for example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, _____, 20__, the Calculation Agent uses SOFR published on the SOFR Publish Date of Wednesday, _____, 20__, which is the SOFR Index for the SOFR Lookback Date of Monday, _____, 20__), and (B) the Applicable Factor, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be % of SOFR.

(iii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

| MATURITY DATE | APPLICABLE SPREAD | MATURITY DATE | APPLICABLE SPREAD |
|---|---|---|---|

(iv) if, during any [SIFMA/SOFR] Index Rate Period, the [SIFMA/SOFR] Index Rate is not reported by, or otherwise ceases to be available from, the relevant source, the substitute or replacement Index Rate, as determined by the Issuer, for the Index Rate Period shall be the substitute determined in writing by the Issuer;

(v) the Index Rate Tender Date shall be _____;

(vi) the Interest Payment Date[s] shall be _____;

(vii) for a Series of Bonds bearing interest at the SIFMA Index Rate, the Index Rate Reset Date[s] shall be [Thursday of each week, or if the SIFMA Index is not issued on Wednesday of such week, the Business Day next succeeding the day on which the SIFMA Index for such week is issued]; and

(viii) for a Series of Bonds bearing interest at the SOFR Index Rate, the SOFR Effective Date shall be [each Business Day][[_____], 20[___]].

*Include the following text for any Series of CPI Bonds:*

(i) the CPI Interest Period shall be _____.

(ii) the Applicable Spread for each Maturity Date, as determined by the Underwriter or the Remarketing Agent, as the case may be, shall be as follows:

| MATURITY DATE | APPLICABLE SPREAD | MATURITY DATE | APPLICABLE SPREAD |
|---|---|---|---|

(iii) the CPI Index Rate for each Maturity Date shall be calculated, in accordance with Section 2.14 of the Indenture, using the CPI Index Rate Formula, which means (i) the total of CPI for the applicable Reference Month less CPI for the twelfth month prior to the applicable Reference Month, divided by (ii) CPI for the twelfth month prior to the applicable Reference Month, which formula would be expressed mathematically as ((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;

Applicable Spread = [ ]%; and

Reference Month = the 3rd calendar month preceding each CPI Index Rate Reset Date.

(iv) the Mandatory Purchase Date shall be _____;

(v) the Interest Payment Date[s] shall be the first Business Day of each Month, commencing on the first Business Day of [_____], [20__]; and

(vi) CPI Index Rate Reset Date[s] shall be the first Business Day of each calendar month; and

(vii) if, during any CPI Index Rate Period, the CPI is not reported by, or otherwise ceases to be available from, the relevant source, but the CPI has otherwise been reported by the BLS, the Calculation Agent will determine the CPI as published by the BLS for such month using a source it deems to be accurate and appropriate.

IN WITNESS WHEREOF, I have set forth my hand this ____ day of _____.

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By _____
Name _____
Title _____

Please sign below to signify your acknowledgement of receipt of this Certificate and, as to the Underwriter or the Remarketing Agreement, as the case may be, your agreement with the terms set forth herein.

ACKNOWLEDGED AND RECEIVED:
THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By _____
Name _____
Title _____

ACKNOWLEDGED, RECEIVED AND AGREED TO:

_____
as Underwriter

By _____
Name _____
Title _____

# EXHIBIT C

**[RESERVED]**

# EXHIBIT D

**[RESERVED]**

# EXHIBIT E

**[RESERVED]**

## SCHEDULE I

## INITIAL PROJECT PARTICIPANT

East Bay Community Energy Authority
Notice Address:
1999 Harrison Street, Suite 800
Oakland, California 94612

## SCHEDULE II

## SCHEDULED DEBT SERVICE DEPOSITS

| DATE | SCHEDULED MONTHLY DEPOSIT | MINIMUM INTEREST EARNINGS ACCRUAL[1] | CUMULATIVE SCHEDULED BALANCE |
|---|---|---|---|
| | $ | $ | $ |

| DATE | SCHEDULED MONTHLY DEPOSIT | MINIMUM INTEREST EARNINGS ACCRUAL[1] | CUMULATIVE SCHEDULED BALANCE |
|---|---|---|---|
| | $ | $ | $ |

| DATE | SCHEDULED MONTHLY DEPOSIT | MINIMUM INTEREST EARNINGS ACCRUAL[1] | CUMULATIVE SCHEDULED BALANCE |
|---|---|---|---|
| | $ | $ | $ |

(1) [Excludes projected interest earnings on the ISDA Agreement with Morgan Stanley Capital Group Inc.]

## SCHEDULE III

## TERMS OF COMMODITY SWAPS

For each Month beginning with _____ 2022 and ending with the earlier of (A) an Early Termination Date has occurred or has been effectively designated or (B) _____, 20__, the Issuer will determine for each "Primary Delivery Point" as set forth on Exhibit A to the Energy Purchase Agreement, (i) the price under the "Contract Index Price" (as set forth on such Exhibit A), (ii) the difference (which may be positive or negative) between such Contract Index Price and the fixed prices for Energy set forth in the Commodity Swap, and (iii) the product of such difference and the Energy quantity, as applicable, for such Primary Delivery Point as set forth on Exhibit A to the Energy Purchase Agreement.

The Issuer will then calculate a net settlement amount for all Primary Delivery Points for such Month due by or to the Issuer under the Commodity Swap that aggregates the amounts determined under clause (iii) above.

All payments from the Issuer or the Commodity Swap Counterparty will be due on each "Payment Date" under the Commodity Swap (which shall be the twenty-fifth ($25^{th}$) 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 2022A-1 BONDS

| DATE | AMORTIZED VALUE | DATE | AMORTIZED VALUE |
|---|---|---|---|
| | $ | | $ |

| 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 [____], 2022

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PREPAID ENERGY SALES AGREEMENT

This Prepaid Energy Sales Agreement (hereinafter "Agreement") is made and entered into as of [____], 2022 (the "Execution Date"), by and between Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company ("Seller"), and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) ("Buyer").

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 Contract (as defined below), the Project Participant (as defined below) under such Power Supply Contract will assign to Seller certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be resold to Buyer hereunder and then resold to the Project Participant under the Power Supply Contract.

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Buyer and Seller (the "Parties" hereto; each is a "Party") agree as follows:

## ARTICLE I.
## DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

"Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.

"Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.

"Assigned Energy" has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.

"Assigned Product" means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

"Assigned RECs" means any RECs to be delivered to MSCG or Seller pursuant to any Assigned Rights and Obligations.

"Assigned Rights and Obligations" means a portion of the Project Participant's rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"Assignment Letter Agreement" means that certain Letter Agreement, dated as of the date hereof, by and among MSCG, Seller, Buyer and Project Participant.

"Automatic Non-Default Termination Event" has the meaning specified in Section 17.3(b).

"Available Discount" has the meaning specified in the Re-Pricing Agreement.

"Balancing Authority" has the meaning specified in the CAISO Tariff.

"Base Energy" means Firm (LD) Energy to be delivered to an Energy Delivery Point.

"Billing Statement" has the meaning specified in Section 14.1(b).

"Bond Closing Date" means the first date on which the Bonds are issued pursuant to the Bond Indenture.

"Bond Documents" means this Agreement, the Power Supply Contract, the Bond Indenture and all other documents, agreements and instruments entered into or delivered by Buyer in connection with any of the foregoing or the transactions thereunder.

"Bond Indenture" means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Buyer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Buyer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

"Bonds" means the bonds issued pursuant to the Bond Indenture.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

"Buyer" has the meaning specified in the preamble.

"Buyer Custodial Agreement" means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among the Swap Counterparty, Buyer, the Trustee and The Bank of New York Mellon Trust Company, N.A., as custodian, as the same may be amended, modified or supplemented from time to time.

"Buyer Default" has the meaning specified in Section 17.2.

"Buyer Swap" means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Buyer and the Swap Counterparty, and (ii) each replacement Buyer Swap entered into pursuant to Section 17.5.

"Buyer's Statement" has the meaning specified in Section 14.1(a).

"CAISO" means California Independent System Operator or its successor.

"CAISO Tariff" means CAISO's FERC-approved tariff, as modified, amended or supplemented from time to time

"California Long-Term Contracting Requirements" means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

"Call Option Notice" has the meaning specified in Exhibit G.

"Claiming Party" has the meaning specified in Section 11.1.

"Claims" means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and

type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

"Contract Index Price" means the index price specified on Exhibit A-1 with respect to the Hourly Quantity of Energy (which index prices may be Day-Ahead Market Price or Real-Time Market Price).

"Contract Quantity" means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in Exhibit A-2 for such Month and (ii) the Hourly Quantity of Base Energy set forth in Exhibit A-1 for such Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.

"Custodial Agreements" means the Buyer Custodial Agreement and the Seller Custodial Agreement.

"Daily Basis Differential" has the meaning specified in Section 18.11(a)(ii).

"Daily Commodity Reference Price" means (A) the Day-Ahead Market Price, (B) the Day-Ahead Average Price or (C) the Real-Time Market Price.

"Daily Replacement Index" has the meaning specified in Section 18.11(a)(ii).

"Day-Ahead Average Price" means, for any Assigned Energy after the Initial EPS Energy Period, (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month; provided that in no case shall the Day-Ahead Average Price hereunder be less than $0.00/MWh. As used in this definition, "Pricing Interval" means the unit of time for which CAISO establishes a separate price.

"Day-Ahead Market Price" means the Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; 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 commencing at 00:00 (PPT) on the first day of the Delivery Period, and each Hour thereafter during the Delivery Period.

"Delivery Period" has the meaning specified in Exhibit F.

"Delivery Point" means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).

"Early Termination Date" means a date designated pursuant to Section 17.4(a) or Section 17.4(b) upon which the Delivery Period will end and Buyer's and Seller's respective obligations to receive and deliver Energy under this Agreement will terminate.

"Early Termination Payment Date" has the meaning specified in Section 17.4(d).

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

"Energy Delivery Point" has the meaning specified in Exhibit A-1.

"Energy Project" has the meaning specified in the Bond Indenture.

"EPS" means California's Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

"EPS Compliant Energy" means Energy that the Project Participant can contract for and purchase in compliance with EPS requirements that are applicable to such Project Participant.

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

"Execution Date" has the meaning specified in the preamble.

"Failed Remarketing" has the meaning specified in the Bond Indenture.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Firm (LD)" means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article IV.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell any Energy purchased hereunder; (iii) the loss or failure of Seller's supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Seller's ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a

Transmission Provider unless (a) such Party (or an upstream supplier with respect to Seller or the Project Participant with respect to Buyer) has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Energy Delivery Point and (b) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; *provided*, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of Seller hereunder; and (II) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Seller until the earlier of (A) the commencement of an "Assignment Period" under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

"Government Agency" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"Governmental Approval" means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, or similar action by any Government Agency relating to the execution, delivery or performance of this Agreement as any of the foregoing are in effect as of the Execution Date.

"Hour" means each 60-minute period commencing at 00:00 (PPT) on the first day of the Delivery Period. The term "Hourly" shall be construed accordingly.

"Hourly Quantity" means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

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

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

"Initial PPA Supplier" means MSCG.

"Interest Rate Period" has the meaning specified in the Bond Indenture, provided that if the Bonds are outstanding in two or more series with separate, concurrent and co-terminus Interest Rate Periods, "Interest Rate Period" shall mean all such Interest Rate Periods collectively.

"Interest Rate Swap" has the meaning specified in the Bond Indenture.

"Law" means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

"Long-Term PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

"Mandatory Purchase Date" has the meaning specified in the Bond Indenture.

"Minimum Discount" has the meaning specified in the Power Supply Contract.

"Month" means a calendar month. The term "Monthly" shall be construed accordingly.

"Monthly Quantity" means, with respect to each Month of the Delivery Period for which, the quantity (in MWh) of Assigned Energy for such Month as set forth on Exhibit A-2 (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

"Morgan Stanley" means Morgan Stanley, a Delaware corporation.

"Morgan Stanley Guarantee" means a guarantee of Morgan Stanley of Seller's payment obligations under this Agreement in the form attached hereto as Exhibit E.

"MSCG" means Morgan Stanley Capital Group Inc., a Delaware corporation.

"MWh" means megawatt-hour.

"Optional Non-Default Termination Event" has the meaning specified in Section 17.3(a).

"Party" has the meaning specified in the recitals.

"PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, Seller or any successors thereto pursuant to any Assigned Rights and Obligations.

"Person" means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

"Portfolio Content Category 1" means any Renewable Energy Credit associated with the generation of electricity from an "Eligible Renewable Energy Resource" consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Power Supply Contract" has the meaning specified in the Bond Indenture.

"PPA Supplier" means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the Assignment Letter Agreement.

"PPT" means Pacific Prevailing Time.

"Prepayment" means the amount specified in Exhibit F.

"Prepayment Outside Date" means the date specified in Exhibit F.

"Project Participant" means 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.

"PSC Remarketing Election" means, with respect to the Power Supply Contract, that the Project Participant delivered a Remarketing Election Notice (as defined thereunder) for any Reset Period.

"Put Option Notice" has the meaning specified in Exhibit G.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Buyer and Seller.

"Real-Time Market Price" means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; 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 The Bank of New York Mellon Trust Company, N.A., as custodian, as the same may be amended, modified or supplemented from time to time.

"Seller Default" has the meaning specified in Section 17.1.

"Seller Specified Termination" has the meaning specified in Section 17.5.

"Seller Swap" means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by Seller and the Swap Counterparty, and (ii) each replacement Seller Swap entered into pursuant to Section 17.5.

"Specified Discount" means the amount specified in Exhibit F.

"Specified Fixed Price" means the amount specified in Exhibit F.

"Specified Investment Agreement" means a guaranteed investment contract between the Trustee and a provider concerning the investment of funds in the Debt Service Account (as defined in the Bond Indenture).

"Swap Counterparty" means [____], 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 The Bank of New York Mellon Trust Company, N.A., and its successors as Trustee under the Bond Indenture.

"WREGIS" means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to "Articles," "Sections," "Schedules" and "Exhibits" shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

## ARTICLE II.
## EXECUTION DATE AND DELIVERY PERIOD

Section 2.1 Execution Date; Delivery Period. This Agreement shall become effective upon the Execution Date and, unless this Agreement is terminated early pursuant to Section 2.2, all of Seller's and Buyer's obligations under this Agreement shall be deemed to have been incurred upon the Execution Date. Unless this Agreement is terminated pursuant to Section 2.2, then, upon receipt of the Prepayment, the delivery of Energy under this Agreement shall commence and continue for the Delivery Period, unless an Early Termination Date occurs.

Section 2.2 Termination by Seller Prior to Prepayment. Seller shall have no obligation to perform under this Agreement unless and until it has received the Prepayment from Buyer pursuant to Section 3.2. In the event Seller has not received the Prepayment prior to noon local time in New York, New York on the Prepayment Outside Date, Seller shall have the right, until such Prepayment has been paid, to terminate this Agreement without any further obligation or liability of either Party; *provided* that, for the avoidance of doubt, in the event Seller so terminates, such termination shall be effective upon the Prepayment Outside Date regardless of whether Buyer tenders the Prepayment after Seller's notice of termination but prior to the Prepayment Outside Date. For the avoidance of doubt, no Termination Payment shall be payable by Seller under any circumstances if this Agreement terminates pursuant to this Section 2.2.

## ARTICLE III.
## SALE AND PURCHASE

Section 3.1 Sale and Purchase of Energy. Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to take or cause to be taken from Seller, in each case, on a Firm (LD) basis, the Contract Quantity pursuant to the terms and conditions set forth in this Agreement. Energy delivered to Buyer under this Agreement shall be re-delivered to the Project Participant on a floating price basis throughout the Delivery Period.

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 methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Buyer and the Calculation Agent (as defined in the Bond Indenture) determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (B) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

## ARTICLE IV.
## FAILURE TO DELIVER OR TAKE ENERGY

Section 4.1 Assigned Product. Notwithstanding anything herein to the contrary, neither Seller nor Buyer shall have any liability or other obligation to one another under this Agreement for any failure to Schedule, take, or deliver Assigned Product other than as set forth in (a) Section 5(a) of Exhibit C for any failure to Schedule, take or deliver not due to Force Majeure and (b) Section 4.2 regarding a failure to Schedule, take or deliver due to Force Majeure.

Section 4.2 Failure to Deliver or Take Due to Force Majeure. If with respect to all or any portion of the Contract Quantity (including any Base Energy or Assigned Energy):

(a) Buyer fails to take or Seller fails to deliver all or any portion of the Contract Quantity at any Delivery Point pursuant to the terms of this Agreement; and

(b) such failure is due to Force Majeure claimed by either Party,

then Seller shall pay to Buyer the result determined by the following formula with respect to each such Delivery Point:

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

## ARTICLE V.
## TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy.

(a) Assigned Product. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Buyer and Seller shall have no liability or obligations under this Article V with respect to Assigned Product.

(b) Updates to Exhibits. Buyer and Seller may, upon mutual agreement, update Exhibit A-1 to modify the Delivery Points thereunder, provided that the Parties shall promptly notify any Swap Counterparty of any such updates and furthermore shall update the corresponding exhibits to any Buyer Swap and any Seller Swap in accordance with the terms thereof. Furthermore, following the Initial EPS Energy Period and thereafter in connection with the establishment, expiration or termination of any subsequent EPS Energy Period, the Parties shall update (i) the exhibits hereto in accordance with Section 6.2 and (ii) the exhibits to any Buyer Swap and any Seller Swap in accordance with the terms thereof. For the avoidance doubt, such updates will reflect that deliveries will be made to (A) the Energy Delivery Point at the Day-Ahead Market Price for any Base Energy and (B) an Assigned Delivery Point at the Day-Ahead Average Price for any Assigned Energy.

Section 5.2 Scheduling. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Section 5.3 Title and Risk of Loss. The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.

Section 5.4 PCC1 Product and Long-Term PCC1 Product. To the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]**. As used above, any capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, Non-modifiable. D.11-01-025]**. As used above, any capitalized terms not otherwise defined herein shall have the meaning specified in the Assigned Agreement.

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

(d) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. **[STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(e) Seller Representations and Warranties.

Seller represents and warrants:

(i) Seller has the right to sell the Assigned Product from the Applicable Project;

(ii) Seller has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Buyer to any other person or entity;

(iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Seller for resale to Buyer hereunder is not being sold by Seller back to the Applicable Project or PPA Seller;

(iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;

(v) The Assigned Product is free and clear of all liens or other encumbrances;

(vi) Seller will deliver to Buyer all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1 Product in compliance with the California Long-Term Contracting Requirements, if applicable

(vii) The Assigned Product supplied to Buyer under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and

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

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

(i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);

(ii) This Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;

(iii) The electricity transferred by this Agreement is transferred to Buyer

in real time; and

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

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

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

(i) Seller has relied exclusively upon the representations and warranties of each respective seller set forth in the Assigned Agreements in making the representations and warranties set forth in this Section 5.4 and has not performed any independent investigation with respect thereto;

(ii) Seller agrees that it will terminate or cause MSCG to terminate the applicable Assignment Period in the event that any representation or warranty in this Section 5.4 proves to be incorrect in any respect;

(iii) Buyer agrees that its sole recourse for any breach of the provisions of this Section 5.4 shall be the termination of the applicable Assignment Period and Buyer shall have no other recourse against Seller or remedies under this Agreement; and

(iv) Section 5.4(d) shall only apply to the provisions of this Section 5.4 and all other provisions of this Agreement shall remain subject to and interpreted in accordance with Section 18.4.

Section 5.5 Deliveries within CAISO or Another Balancing Authority. The Parties acknowledge that Energy delivered by Seller at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Balancing Authority shall constitute delivery of such Energy to Buyer, provided that any Assigned Products associated with the Energy are also delivered to Buyer hereunder.

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

## ARTICLE VI.
## PARTIAL ASSIGNMENTS OF PPAS

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

Section 6.2 Updates to Exhibits A-1 and A-2.

(a) To the extent that an EPS Energy Period terminates or expires and Assigned Energy is not available for delivery immediately following (i) the end of the period for which Force Majeure is deemed to occur in the event of an early termination or (ii) the expiration of an EPS Energy Period, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities of Base Energy and (ii) Exhibit A-2 to reflect a decrease in the Monthly Quantities of Assigned Energy thereunder, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired.

(b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect (i) appropriate decreases in the Hourly Quantities of Base Energy and increases in the Monthly Quantities of Assigned Energy and (ii) any other changes in connection therewith.

## ARTICLE VII.
## ENERGY REMARKETING

If (a) the Project Participant is in default under the Power Supply Contract or does not require or is unable to receive all or any portion of the Energy purchased by Buyer under this Agreement as a result of (i) the Project Participant's decreased Energy requirements, (ii) decreased demand by the Project Participant's retail customers and its request that such Energy be remarketed or (iii) EPS Compliant Energy not being available for delivery hereunder; or (b) a quantity of Assigned Energy less than the Monthly Quantity is delivered hereunder in any Month for any reason, then Buyer shall request (and pursuant to Exhibit C may be deemed to request) remarketing services from Seller pursuant to the provisions of Exhibit C.

## ARTICLE VIII.
## REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) it is duly organized and validly existing under the Laws of the state in which it is organized;

(b) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;

(c) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(d) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(e) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(f) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;

(g) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Buyer, the lien of the Bond Indenture;

(h) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and

(i) it enters this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Additional Representations and Warranties of Buyer. As a material inducement to entering into this Agreement, Buyer hereby represents and warrants to Seller as of the Execution Date as follows:

(a) Buyer is entering into this Agreement for the purpose of acquiring Energy for sale to its Project Participant pursuant to the Power Supply Contract;

(b) any amounts payable by Buyer under this Agreement shall (i) other than the Prepayment, be payable as an item of Operating Expense under (and as defined in) the Bond Indenture, and (ii) not constitute an indebtedness or liability of Buyer within the meaning of any constitutional or statutory limitation or restriction applicable to Buyer;

(c) Buyer will promptly alert Seller of any notice received by Buyer alleging a breach under the Bond Indenture or of any covenant of Buyer in the agreements entered into by Buyer in connection with the Energy Project;

(d) Buyer shall not (i) enter into any Bond Documents (excluding any contracts applicable to Energy being resold by Buyer or the Project Participant (or a related joint powers authority selling Energy to the Project Participant)), (ii) consent to, waive or agree to or permit any material amendment to or rescission of any such Bond Documents or (iii) consent to, waive or agree to permit any amendment (whether or not material) to or rescission of the Bond Indenture, in each case, without the prior written consent of Seller;

(e) Buyer shall collect and forthwith cause to be deposited in the relevant funds pursuant to the Bond Indenture all amounts payable to it pursuant to the Power Supply Contract. Buyer shall enforce the provisions of the Power Supply Contract, as well as any other contract or contracts entered into relating to the Energy Project, and duly perform its covenants and agreements thereunder. Buyer shall not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Power Supply Contract which will impair the ability of Buyer to pay all of its debts and obligations as they come due; provided that this provision shall not prevent Buyer from otherwise taking any action under or in connection with the Power Supply Contract which is expressly permitted pursuant to the provisions thereof. A copy of the Power Supply Contract and any amendment thereto certified by an authorized officer of Buyer shall be provided to Seller. Buyer shall not enter into any new Power Supply Contract following the Bond Closing Date without the prior written consent of Seller;

(f) Buyer shall keep or cause to be kept with respect to the Energy Project proper books of record and account (separate from all other records and accounts) in accordance with generally accepted accounting principles, as such may be modified by the provisions of the Bond Indenture, in which complete and correct entries shall be made of its transactions relating to the Energy Project, the amount of revenues and the application thereof and each fund and account established under the Bond Indenture and relating to its costs and charges under the Power Supply Contract and any other contracts for the sale or purchase of Energy, and which, together with all contracts and all other books and papers of Buyer relating to the Energy Project, shall, subject to the terms thereof, at all times during regular business hours be subject to the inspection of Seller;

(g) Buyer shall from time to time duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges, or required payments in lieu thereof, lawfully imposed upon the properties of Buyer or upon the rights, revenues, income,

receipts, and other moneys, securities and funds of Buyer when the same shall become due, and all lawful claims for labor and material and supplies, except those taxes, assessments, charges or claims which Buyer shall in good faith contest by proper legal proceedings if Buyer shall in all such cases have set aside on its books reserves deemed adequate by Buyer with respect thereto;

(h) Buyer shall at all times maintain its existence and shall do and perform or cause to be done and performed all acts and things required to maintain its existence; and

(i) Buyer shall not consolidate or amalgamate with, or merge with or into, or transfer all or substantially all its assets to, or reorganize, reincorporate or reconstitute into or as, another entity unless (i) prior to such event, Buyer receives confirmation from Seller that such event does not trigger a termination event under this Agreement or the Buyer Swap and (ii) at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity assumes all the obligations of Buyer under this Agreement and the Buyer Swap.

Section 8.3 Warranty of Title. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY SELLER IN THIS ARTICLE VIII, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE IX.
## TAXES

Seller shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Points, and (ii) indemnify Buyer and its Affiliates for any such taxes paid by Buyer or its Affiliates. Buyer shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Points, and (ii) indemnify Seller and its Affiliates for any such taxes paid by Seller or its Affiliates.

## ARTICLE X.
## DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by

JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Dispute Resolution.

(a) Judicial Reference. Without limiting the provisions in Section 10.1, if Section 10.1 is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "Dispute") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10.2(b).

(b) Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Party (the "Responding Party") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the "Negotiation Period"), then either Party may provide to the other Party written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

(i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(iii) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests,

a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

(e) Decision. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(f) Expenses. Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

## ARTICLE XI.
## FORCE MAJEURE

Section 11.1 Applicability of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 Settlement of Labor Disputes. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

## ARTICLE XII.
## GOVERNMENTAL RULES AND REGULATIONS

Section 12.1 Compliance with Laws. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided*, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support

the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance of this Agreement by either Party.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

## ARTICLE XIII.
## ASSIGNMENT

Neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however, that:

(a) pursuant to the Bond Indenture, Buyer may, without the consent of Seller, transfer, sell, pledge, encumber or assign this Agreement to the Trustee in connection with any financing or other financial arrangements; provided that Buyer shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Buyer also assigns the Buyer Swap (and the Buyer Custodial Agreement) to the same assignee;

(b) With the prior written consent of Buyer, not to be unreasonably withheld, Seller may assign this Agreement to an Affiliate of Seller, provided that the Morgan Stanley Guarantee continues to apply to the obligations of such assignee hereunder or the assignee provides to Buyer a parent guarantee and a Rating Confirmation (as defined in the Bond Indenture), which assignment shall constitute a novation; provided that, Seller shall not assign this Agreement unless, contemporaneously with the effectiveness of such assignment, Seller also assigns the Seller Swap (and the Seller Custodial Agreement) to the same assignee; and

(c) if either (A) Seller notifies Buyer that the Morgan Stanley Guarantee will be terminated as of the end of any Interest Rate Period; (B) Seller is unable to provide, under the Re-Pricing Agreement, an estimated Available Discount (as defined in the Re-Pricing Agreement) that is equal to or greater than the Minimum Discount under the Power Supply Contract; or (C) the circumstances set forth in Section 5(b)(iii) of the Re-Pricing Agreement regarding replacement of Seller with an Alternative Supplier (as defined in the Re-Pricing Agreement) apply, Seller will reasonably cooperate with Buyer to cause Seller's (or Seller's Affiliate's, if applicable) right, title and interest in this Agreement, the Re-Pricing Agreement, the Seller Swap, the Seller Custodial Agreement, the Interest Rate Swap and any Specified Investment Agreement with a term that extends past the then-current Interest Rate Period to which Seller or any Affiliate is a party and all agreements related to any of the foregoing (the "Transaction Documents") to be novated to a replacement seller; provided that (x) a Rating Confirmation (as defined in the Bond Indenture) is obtained for any Bonds required to be redeemed on the first Mandatory Purchase Date following the effective date of such novation, (y) the Swap Counterparty shall have provided its prior written

consent to such assignment in accordance with the terms of the Seller Swap, and (z) after giving effect to such novation, neither Seller nor Morgan Stanley will have any obligations (contingent or otherwise, including any obligation to make or repeat any representations or warranties other than basic representations on authority and the right to transfer its rights, title and interests under this Agreement without encumbrances) or be required to make any payment under any Transaction Document, the Morgan Stanley Guarantee or otherwise in connection with or following such novation other than any obligations that would have existed or payments that would have been required (or guaranteed) had this Agreement terminated as of the end of the last Reset Period that commenced prior to such novation.

## ARTICLE XIV.
## PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the 5th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Buyer shall deliver to Seller a statement (a "Buyer's Statement") listing any other amounts due to Buyer in connection with this Agreement with respect to the prior Month(s).

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Seller shall deliver a statement (a "Billing Statement") to Buyer indicating (i) the total amount due to Buyer, if any, under Article IV, Article V, Article VII and Exhibit C with respect to the prior Month(s), (ii) any amounts due to Seller in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Buyer or Seller. If the actual quantity delivered is not known by the Billing Date, Seller may provisionally prepare a Billing Statement based on Seller's best available knowledge of the quantity of Energy delivered, which shall not exceed the sum of the Contract Quantity of all Delivery Hours in such Month plus any make-up quantities delivered during such Month. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Buyer at the Default Rate) will then be adjusted on the following Month's Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

(c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Buyer, then Buyer shall remit such amount to Seller by wire transfer (pursuant to Seller's instructions), in immediately available funds, on or before the later of (i) the 25th day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10th day following Buyer's receipt of Seller's Billing Statement, or if either such day is not a Business Day, the following Business Day. If the Billing Statement indicates an amount due from Seller, then Seller shall remit such amount to Buyer by wire transfer (pursuant to Buyer's instructions), in immediately available funds, on or before the later of (i) the 22nd day of the Month following the most recent Month to

which such Billing Statement relates, or (ii) the 10th day following Seller's receipt of Buyer's Statement, or if either such day is not a Business Day, the preceding Business Day.

(b) If Buyer fails to issue a Buyer's Statement with respect to any Month, Seller shall not be required to estimate any amounts due to Buyer for such Month, *provided* that Buyer may include any such amount on subsequent Buyer's Statements issued within the next sixty (60) days. The sixty (60)-day deadline in this subsection (b) replaces the two (2)-year deadline in Section 14.5 with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts. If Seller disputes any amounts included in the Buyer's Statement, Seller shall (a) (except in the case of manifest error) nonetheless calculate the Billing Statement based on the amounts included in Buyer's Statement and (b) pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Seller may have; *provided*, however, that Seller shall have the right, after payment, to dispute any amounts included in a Buyer's Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5(b). If Buyer disputes any amounts included in the Billing Statement, Buyer may withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

Section 14.4 Late Payment. If a Party owing a net payment under Section 14.2 fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Each Buyer's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Buyer's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.

(c) All retroactive adjustments shall be paid in full by the Party owing payment within 30 days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on incorrect Buyer's Statements or Billing Statements shall bear interest at the Default Rate from the date such

payment was made. Buyer shall cause the Project Participant to comply with the provisions of Section 14.5(a) to the extent necessary to allow Seller to verify any amounts due under this Agreement.

Section 14.6 Netting. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, Seller shall not be entitled to net (i) any amounts that are in dispute or (ii) any payments due to Seller against (A) the Termination Payment if it becomes due, or (B) any payments due from Seller pursuant to Article IV, Article V or Exhibit C.

## ARTICLE XV.
## RECEIVABLES PURCHASES

In accordance with the provisions of Exhibit G, Buyer shall put and Seller shall purchase certain Put Receivables (as defined in Exhibit G) from Buyer relating to payment defaults by the Specified Project Participant (as defined in Exhibit G).

## ARTICLE XVI.
## NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

## ARTICLE XVII.
## DEFAULT; REMEDIES; TERMINATION

Section 17.1 Seller Default. Each of the following events shall constitute a "Seller Default" under this Agreement:

(a) Seller fails to pay when due any amounts owed to Buyer pursuant to this Agreement and such failure continues for two Business Days after receipt by Seller of notice thereof, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;

(b) Seller: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its

inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Seller in this Agreement proves to have been incorrect in any material respect when made.

Section 17.2 Buyer Default. Each of the following events shall constitute a "Buyer Default" under this Agreement:

(a) Buyer fails to pay when due any amounts owed to Seller pursuant to this Agreement and such failure continues for five Business Days after receipt by Buyer of notice thereof;

(b) Buyer (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied,

enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(c) any representation or warranty made by Buyer in this Agreement proves to have been incorrect in any material respect when made.

Section 17.3 Non-Default Termination Events.

(a) Each of the following events shall constitute an "Optional Non-Default Termination Event" under this Agreement:

| Termination Related to: | Optional Non-Default Termination Event: | Potential Terminating Party: |
|---|---|---|
| Performance Prohibited by Law | Any interpretation, enactment or change or amendment to any Governmental Approval or Law occurring after the Execution Date that results or would result in the performance of any obligation of Seller to deliver Energy or of Buyer to receive Energy under this Agreement being prohibited or unlawful. | Each of Buyer or Seller |
| Termination 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 the Project Participant makes a PSC Remarketing Elections for any Reset Period. | Seller |
| Termination of Power Supply Contract | If the Power Supply Contract has been terminated or are otherwise no longer in effect as of the end of a Reset Period. | Seller |

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

| Termination Related to: | Automatic Non-Default Termination Event: |
|---|---|
| Termination of a Buyer Swap | Both (A) an Early Termination Date (as defined in the Buyer Swap) is designated pursuant to the terms of the Buyer Swap for any reason or occurs automatically pursuant to the terms of the Buyer Swap based on an Event of Default or Termination Event (as each term is defined in the Buyer Swap), and (B) either the Seller Swap or the Buyer Swap is not replaced within the Swap Replacement Period. |
| Termination of a Seller Swap for Seller Defaults and Termination Events | Both (A) an Early Termination Date (as defined in the Seller Swap) is designated by the Swap Counterparty pursuant to the terms of the Seller Swap or occurs automatically pursuant to the terms of the Seller Swap based on an Event of Default where Seller is the Defaulting Party or a Termination Event where Seller is the sole Affected Party (as each term is defined in the Seller Swap), but excluding any termination as a result of the termination of this Agreement based on (i) a Buyer Default under 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. |

| Termination Related to: | Automatic Non-Default Termination Event: |
|---|---|
| Morgan Stanley Guarantee Ceases to be in Full Force and Effect | The Morgan Stanley Guarantee ceases to be in full force and effect or is declared to be null and void, or Morgan Stanley contests the validity or enforceability of the Morgan Stanley Guarantee; provided that, for avoidance of doubt, no such event will occur as a consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. |
| Remarketing Non-Default Termination Event | The occurrence of a Remarketing Non-Default Termination Event if, by the 90th day after such event, neither (i) Buyer and Seller have taken the actions described in 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);

(ii) with respect to an Optional Non-Default Termination Event related to the Buyer Swap, the Terminating Party may, at any time after the commencement of the Swap Replacement Period, conditionally designate an Early Termination Date, with such designation being conditioned upon (A) the termination and failure to replace either the Seller Swap or the Buyer Swap and (B) the Early Termination Date occurring no earlier than the end of such Swap Replacement Period; and

(iii) with respect to an Optional Non-Default Termination Event related to the termination of the Power Supply Contract, if Seller exercises its termination right, the resulting Early Termination Date shall occur as of the end of the then-current Reset Period.

(b) Automatic Non-Default Termination. The Early Termination Date shall occur automatically upon the occurrence of any Automatic Non-Default Termination Event; *provided*, however, in the case of an Automatic Non-Default Termination Event resulting from a

termination of the Morgan Stanley Guarantee, the Early Termination Date will occur as of the end of the last day in the then-current Reset Period.

(c) Effect of Early Termination. As of the Early Termination Date, (i) the Delivery Period shall end, (ii) the obligation of Seller to make any further deliveries of Energy to Buyer under this Agreement shall terminate, and (iii) the obligation of Buyer to receive deliveries of Energy from Seller under this Agreement will terminate.

(d) Early Termination Payment Date. (i) In the case of a Failed Remarketing, the last Business Day of the then-current Interest Rate Period, and (ii) in each other case, on the last Business Day of the first Month that commences after the Early Termination Date (the "Early Termination Payment Date"), Seller shall pay the Termination Payment to the Trustee pursuant to payment instructions issued by Buyer or, in the absence of such instructions, by wire transfer. Such amounts shall be paid together with interest thereon (before as well as after judgment) from (and including) the Early Termination Payment Date to (but excluding) the date such amount is paid, at the Default Rate. The Parties acknowledge that it is impractical and difficult to assess actual damages as a result of a termination of this Agreement, and the Parties therefore agree that the payment of the Termination Payment is a fair and reasonable pre-estimate of the actual damages that would be incurred by Buyer as a result of termination of this Agreement for any reason and is not a penalty. The obligation of Seller to pay the Termination Payment on the Early Termination Payment Date is unconditional, irrespective of the validity or enforceability of this Agreement or any other agreement contemplated hereby, any waiver or consent by Buyer or any other circumstances that might otherwise constitute a legal or equitable discharge of Seller or a defense of Seller to pay the Termination Payment. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller's obligation to pay the Termination Payment on the Early Termination Payment Date.

(e) Exclusive Termination Rights. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII and in Section 2.2. Except with respect to amounts due for periods prior to termination, the payment of the Termination Payment shall be the sole and exclusive remedy for each Party upon the termination of the Delivery Period and this Agreement for any reason, including as a result of rejection of this Agreement by either Party in any bankruptcy proceedings.

Section 17.5 Replacement of Swaps.

(a) In the event that (i) any Buyer Swap or any Seller Swap terminates, (ii) any notice of termination is delivered by any party to a Buyer Swap or a Seller Swap, or (iii) any Buyer Swap or Seller Swap is otherwise reasonably anticipated to become subject to immediate termination, in each case for any reason other than a Seller Specified Termination or insolvency of either Buyer or Seller, then each Party whose swap is affected shall notify the other Party and the Parties shall cooperate in good faith for a period of 120 days (commencing no later than the date on which any notice of termination (or anticipated termination) is delivered by any party to a Buyer Swap or a Seller Swap) (such period, the "Swap Replacement Period") to (x) cause the same Swap Counterparty whose Buyer Swap or Seller Swap has been terminated (or is anticipated to terminate) to terminate its unaffected Seller Swap or Buyer Swap, as applicable, and (y) locate replacement agreements with an alternate Swap Counterparty, to be mutually agreed upon by

Buyer and Seller, to replace both the affected swap and the unaffected swap; provided, however, that neither Party shall be required to breach any obligation under the unaffected swap or to expend any amounts to cause the unaffected swap to be replaced or to cause an alternate counterparty to replace both swaps. Neither Party shall terminate this Agreement as a result of the termination of any Seller Swap or any Buyer Swap without first complying with this Section 17.5.

As used in this Section 17.5, the term "Seller Specified Termination" means a termination or potential termination of the Seller Swap due to (i) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller pursuant to Section 5(a)(i) or 5(a)(iii) of the Seller Swap, in either case other than where (A) any such failure to pay or transfer was caused solely by error or omission of an administrative or operational nature; (B) funds were available to enable Seller to make such payment or transfer when due; and (C) such payment or transfer is made within two (2) Business Days of Seller's receipt of written notice of its failure to pay or transfer, or (ii) an Event of Default (as such term is defined in the Seller Swap) with respect to Seller under Section 5(a)(viii) of the Seller Swap.

(b) In the event of a termination (or anticipated termination) of the Seller Swap, if Seller (i) presents to Buyer a proposed alternate Swap Counterparty, (ii) requests in writing that Buyer enter into a replacement swap with such alternate Swap Counterparty, and (iii) agrees to pay Buyer's reasonable expenses in connection therewith, Buyer shall (y) enter into a master agreement with such alternate Swap Counterparty and (z) either (A) terminate the Buyer Swap when permitted thereby and enter into a replacement transaction under such new master agreement to the same effect as the terminated Buyer Swap or (B) cause such Buyer Swap to be novated to such replacement Swap Counterparty, *provided* that, in each instance, such replacement Swap Counterparty, replacement master agreement and replacement transaction meet the requirements specified for such under the Bond Indenture. Buyer shall not replace a Buyer Swap without Seller's consent.

(c) Each of Buyer and Seller agree that it will not enter into a replacement Buyer Swap or Seller Swap, as applicable, unless the other Party is replacing its Buyer Swap or Seller Swap, as applicable, with the same replacement Swap Counterparty.

(d) In the event that the Seller Swap terminates or is no longer in effect and the MSES Payments Period (as defined in the Seller Custodial Agreement) is in effect, then, during such Prepaid Seller Payments Period, Seller shall comply with the terms of the Seller Custodial Agreement and make all payments as and when required under Section 3(e) of the Seller Custodial Agreement. In the event that the Buyer Swap terminates or is no longer in effect and the Issuer Payments Period (as defined in the Buyer Custodial Agreement) is in effect, then, during such Issuer Payments Period, Buyer shall comply with the terms of the Buyer Custodial Agreement and make all payments as and when required under Section 3(e) of the Buyer Custodial Agreement. The Parties agree that during any MSES Payments Period (as defined in the Seller Custodial Agreement) and during any Issuer Payments Period (as defined in the Buyer Custodial Agreement), Seller shall act as calculation agent under the Seller Custodial Agreement or the Buyer Custodial Agreement, as applicable. Seller agrees not to permit any amendment or other modification to the Seller Custodial Agreement that could adversely affect the right of Buyer to receive payments pursuant to Section 3(e) of the Seller Custodial Agreement. Buyer agrees not to permit any amendment or other modification to the Buyer Custodial Agreement that could

adversely affect the right of Seller to receive payments pursuant to Section 3(e) of the Buyer Custodial Agreement.

Section 17.6 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE, THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN COMMODITY PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN. THE PARTIES ACKNOWLEDGE THAT THIS IS A SALE OF GOODS SUBJECT TO ARTICLE 2 OF THE NEW YORK UNIFORM COMMERCIAL CODE, INCLUDING WITHOUT LIMITATION, §§ 2-706(6), 2-711, 2-718, AND 2-719.

Section 17.7 Option to Purchase Bonds. In connection with any new Interest Rate Period established under the Bond Indenture after the initial Interest Rate Period, Seller shall have the option to purchase Bonds to be remarketed on the relevant Mandatory Purchase Date by delivering notice to Buyer and the Trustee no later than the last Business Day of the Reset Period that Seller will purchase a quantity of Bonds necessary to avoid the occurrence of a Failed Remarketing. In the event that Seller exercises such option, (x) Seller will be obligated to pay the purchase price of such Bonds in immediately available funds on the Mandatory Purchase Date, and (y) to the extent a PSC Remarketing Election is in effect with respect to the Reset Period

commencing immediately prior to such Interest Rate Period, then Seller shall be required to remarket the Contract Quantities associated with the PSC Remarketing Election, *provided* that:

(a) Seller shall be entitled to purchase such Energy for its own account,

(b) for all such Energy, regardless of how it is remarketed, Seller will pay Buyer the amount determined pursuant to Section 5(b)(v) of Exhibit C, and

(c) to the extent that it is determined that interest on the Bonds purchased by Seller is not excluded from gross income for federal income tax purposes, Section 7 through Section 9 of Exhibit C shall not apply to any such remarketing.

Section 17.8 Termination Payment Adjustment Schedule. Seller shall prepare revisions to the then-current Exhibit D-1 (Termination Payment Adjustment Schedule) in connection with each successive Interest Rate Period pursuant to the terms of the Re-Pricing Agreement by delivering a revised Exhibit D-1 to Buyer no later than the last day of the applicable Reset Period, in which case such amendments will be effective as of the first day of the next Interest Rate Period.

## ARTICLE XVIII.
## MISCELLANEOUS

Section 18.1 Indemnification Procedure. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys' fees and experts' fees and to post any appeals bonds; *provided*, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 Deliveries. No later than delivery of the Prepayment, Buyer will deliver to Seller a copy of the Bond Indenture. The following documents shall be delivered by the Parties contemporaneously with this Agreement (unless otherwise specified):

(a) by Seller no later than the date of issuance of the Bonds, a Morgan Stanley Guarantee to Buyer guaranteeing Seller's payment obligations under this Agreement to Buyer;

(b) by Buyer, a certificate of the Secretary or Assistant Secretary of Buyer setting forth (i) the resolutions of its governing body with respect to the authorization of Buyer to execute and deliver this Agreement, the Bond Indenture and the Power Supply Contract, (ii) the appropriate individuals who are authorized to sign such agreements, (iii) specimen signatures of such authorized individuals, and (iv) the organization documents of Buyer, certified as being true and complete;

(c) by Seller, evidence reasonably satisfactory to Buyer of (i) Seller's authority to execute and deliver this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement; and

(d) at Seller's request at any time, Buyer shall provide Seller with a valid sales tax exemption certificate and any other required exemption or resale certificate in jurisdictions where sales of Energy occur under this Agreement to the extent such a certificate can be obtained and is necessary for exemption from any relevant state taxes that may be levied against the Parties in relation to the transactions under, or pursuant, to this Agreement.

Section 18.3 Entirety; Amendments.

(a) This Agreement and the Re-Pricing Agreement, including the exhibits and attachments hereto and thereto, constitute the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein and in the Re-Pricing Agreement. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

(b) If a Remarketing Non-Default Termination Event occurs, then Buyer and Seller may, upon mutual agreement in each Party's sole discretion, amend this Agreement to reduce the Contract Quantity for one or more subsequent Months and to obligate Seller to pay the Trustee for the account of Buyer, an amount sufficient, together with other funds available under the terms of the Bond Indenture for such purpose, to pay the redemption price of the Bonds to be redeemed on such redemption date and any settlement payable by Buyer due to the corresponding amendment to the Buyer Swap and the Interest Rate Swap, and Buyer and Seller may simultaneously amend Exhibit D to reduce the Termination Payment for one or more such Months, but in each case only if Buyer and Seller have delivered to the Trustee:

(i) An executed counterpart of such amendment;

(ii) An executed counterpart of an amendment to the Power Supply Contract reducing the Contract Quantity to be sold and delivered thereunder in the same Months by the same quantities;

(iii) An executed counterpart of an amendment to the Buyer Swap reducing the notional amounts thereunder for the same Months by the same quantities;

(iv) An executed counterpart of an amendment to the Interest Rate Swap reducing the notional amounts thereunder in each subsequent Month by the amount by which the principal amount of the Bonds of the related series scheduled to remain outstanding in such Month will be reduced as a result of such redemption;

(v) The revised schedules and notices required by Section 2.01(c) of the Bond Indenture in connection with any related partial redemption;

(vi) An Accountant's Certificate (as defined in the Bond Indenture) to the effect that each of (A) the scheduled Termination Payments for this Agreement for each Month thereafter is equal to or exceeds the aggregate principal amount of and interest on the Bonds scheduled to remain outstanding at the beginning of such Month, assuming that the Bonds are redeemed in accordance with the Bond Indenture, less the scheduled balance of the Debt Service Fund (as defined in the Bond Indenture) at the end of such Month and (B) the expected cashflow to the Trust Estate (as defined in the Bond Indenture) is sufficient to meet the ongoing debt service for the Bonds scheduled to remain outstanding;

(vii) The accompanying Opinion of Bond Counsel (as defined in the Bond Indenture) required by Section 2.03(c) of the Bond Indenture for such redemption; and

(viii) A Rating Confirmation (as defined in the Bond Indenture) in respect of such amendments and redemption.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW; *PROVIDED*, HOWEVER, THAT THE AUTHORITY OF BUYER TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party granting such waiver. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding

sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationships of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other, except that Seller shall act on behalf of Buyer in remarketing Energy pursuant to Exhibit C. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Buyer represents and covenants to and agrees with Seller that it is not entitled to and shall not assert the defense of sovereign immunity with respect to its obligations or any Claims under this Agreement.

Section 18.11 Rates and Indices.

(a) Commodity Reference Prices.

(i) Price Replacement Process for Energy. If a Daily Commodity Reference Price for Energy is not available for any Hour but such Daily Commodity Reference Price has not permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price for the applicable Hours. If such agreement is not reached by the Parties within three (3) Business Days, the Parties shall request quotations for the applicable Daily Commodity Reference Price from four (4) recognized dealers in the applicable commodity (two (2) selected by each Party) for the period that such Daily Commodity Reference Price is expected to be unavailable. If four (4) quotations are provided as requested, the applicable Daily Commodity Reference Price for the applicable Hours shall be the arithmetic mean of the quotations provided by each recognized dealer after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the applicable Daily Commodity Reference Price for the applicable Hours shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then the value of the two (2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received.

(ii) Price Replacement Process for Non-Published Index. If a Daily Commodity Reference Price is not available because it has permanently ceased to be published, then the Parties shall promptly endeavor to agree on an alternative source for determination of such Daily Commodity Reference Price, which may include agreeing upon a published index or a basket of published indices ("Daily Replacement Index") from which to seek quotes for basis differentials as the replacement for the applicable Daily Commodity Reference Price. If such agreement is not reached by the Parties within three (3) Business Days, then the Daily Replacement Index shall be selected by Seller, acting reasonably. The Parties shall request quotations from four (4) recognized dealers in the

applicable commodity (two (2) selected by each Party) for a basis differential ("Daily Basis Differential") between the Daily Replacement Index and physical prices at the relevant Delivery Point for the remaining term of this Agreement. If four (4) quotations are provided as requested, the Daily Basis Differential will be the arithmetic mean of the quotations provided by each recognized dealer, after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then one (1) of such quotations shall be disregarded. If exactly three (3) quotations are provided, the Daily Basis Differential shall be the quotation provided by the relevant dealer that remains after disregarding the quotations having the highest and lowest values; *provided* that, if more than one (1) quotation has the same value, then the value of the two (2) quotations with the same value shall control. If fewer than three (3) quotations are provided, the Parties shall seek additional quotations until at least three (3) have been received. The applicable Daily Commodity Reference Price shall be the Daily Replacement Index plus the Daily Basis Differential calculated in accordance with the provisions of this clause (iii).

(b) Corrections. If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within thirty (30) days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 18.12 Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of Buyer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Buyer payable solely from Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Buyer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Buyer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Buyer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Rights of Trustee. Pursuant to the terms of the Bond Indenture, Buyer has irrevocably appointed the Trustee as its agent to issue notices (including Remarketing Notices, Call Option Notices, Put Option Notices and Repurchase Offers) and, as directed under the Bond Indenture, to take any other actions that Buyer is required or permitted to take under this Agreement. Seller may rely on notices or other actions taken by Buyer or the Trustee and Seller has the right to exclusively rely on any notices delivered by the Trustee that the Trustee is authorized to deliver under the Bond Indenture, regardless of any conflicting notices that it may receive from Buyer.

Section 18.15 Waiver of Defenses. Seller waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Seller with regard to Seller's obligations pursuant to the terms of this Agreement.

Section 18.16 U.S. Resolution Stay. The Parties agree that (i) to the extent that prior to the date hereof the Parties hereto have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "Protocol"), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement and each Party shall be deemed to have the same status as Regulated Entity or Adhering Party as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the Parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "Bilateral Agreement"), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement and for such purposes each Party shall be deemed to have the same status as "Covered Entity", "Counterparty Entity" or "Client Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "Bilateral Terms") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" or the "Agency Version of Omnibus Agreement (for use with U.S. G-SIBs)", as applicable, published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement," Seller shall be deemed a "Covered Entity" and Buyer shall be deemed a "Counterparty Entity" (or "Client Entity" for the Agency version, as applicable). In the event that, after the date of this Agreement, the Parties hereto become adhering Parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "QFC Stay Terms"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Agreement" include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other. In addition, the Parties agree that the terms of this paragraph

shall be incorporated into any related covered affiliate credit enhancements, as applicable, with all references to Seller replaced by references to the covered affiliate support provider.

"QFC Stay Rules" means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

Section 18.17 Rate Changes.

(a) Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 18.17(b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

(b) In addition, and notwithstanding Section 18.17(a), to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. In the event it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 18.17(b) shall not apply, *provided* that, consistent with Section 18.17(a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in Section 18.17(a).

IN WITNESS WHEREOF, the Parties have caused this Prepaid Energy Sales Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

***[Separate Signature Page(s) Attached]***

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

**EXHIBIT A-1**
**BASE ENERGY HOURLY QUANTITIES**

[To come.]

**EXHIBIT A-2**
**EPS ENERGY PERIOD MONTHLY QUANTITY**

[To come.]

**EXHIBIT B**

**NOTICES**

| | |
|---|---|
| **IF TO SELLER:** | Morgan Stanley Energy Structuring, L.L.C.<br>1585 Broadway<br>New York, NY 10036-8293 |
| General Notices: | Attn: Miscellaneous Notices<br>Phone: 914-225-1548<br>Email: [____] |
| Scheduling: | Attn: Natgas Schedulers, Steve Zanon<br>Phone: 914-225-5483<br>Mobile: 914-327-1543<br>Email: natgas_schedulers@morganstanley.com<br>Email: Steven.Zanon@morganstanley.com |
| Payments/Invoicing/ Statements: | Attn: Manager, Natural Gas Ops<br>Phone: 443-627-6673<br>Fax: 914-750-1494<br>Email: physngsettle@morganstanley.com |
| **IF TO BUYER:** | California Community Choice Financing Authority<br>1125 Tamalpais Avenue<br>San Rafael, CA 94901<br>Email: [____] |

# 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 Contract.

"Monthly Remarketing Notice" has the meaning specified in Section 3(b) of this Exhibit C.

"Municipal Utility" means any Person that (a) (i) is a "governmental person" as defined in Treasury Regulation Section 1.141-1(b) and (ii) owns an electric distribution utility (or provides Energy at wholesale to entities described in clause (i) that own such utilities) or (b) is a community choice aggregator organized under the Laws of the State of California. Buyer may from time to time revise the definition of "Municipal Utility" to conform to the applicable provisions of the

Code or Treasury Regulations by delivery of written notice to Seller setting forth the revised definition together with a Tax Opinion.

"Net Participant Price" means, with respect to the Project Participant, the Contract Index Price less the Monthly Discount.

"Non-Private Business Remarketing Proceeds" means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller's remarketing of Energy in any Non-Private Business Sale.

"Non-Private Business Sale" means a sale (other than a Qualified Sale) of Energy to a "governmental person" as defined in Treasury Regulation Section 1.141-1(b) that in each case agrees in writing to not use any part of such Energy for a Private Business Use.

"Non-Private Business Sales Ledger" has the meaning specified in Section 7(a) of this Exhibit C.

"Non-Qualifying Remarketing Limit" means a quantity of Energy, in MWhs, equal to 10% of the total quantity of Energy, in MWhs, to be delivered hereunder, as such Non-Qualifying Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Non-Qualifying Remarketing Limit

"Private Business Remarketing Limit" means a quantity of Energy in MWhs equal to (a) $15,000,000, divided by (b) the Specified Fixed Price, as such Private Business Remarketing Limit may be increased from time to time upon receipt by Buyer and Seller of a Tax Opinion setting forth a higher Private Business Remarketing Limit.

"Private Business Remarketing Proceeds" means all proceeds received by Buyer under Section 5 of this Exhibit C from Seller's remarketing of Energy in any Private Business Sale (including the purchase of such Energy by Seller for its own account).

"Private Business Sale" means any sale of Energy other than in a Non-Private Business Sale or a Qualified Sale.

"Private Business Sales Ledger" has the meaning specified in Section 7(b) of this Exhibit C.

"Private Business Use" has the meaning ascribed to such term in Section 141 of the Code.

"Qualified Sale" means the sale of Energy to a Municipal Utility that agrees in writing (i) to use all of such Energy for a Qualifying Use that is not a Private Business Use and (ii) not to count any purchase of such Energy towards any remediation obligations such Municipal Utility may have with respect to proceeds received from the sale of property purchased with tax-exempt financing proceeds.

"Qualifying Use" with respect to Energy has the meaning ascribed to such term in Treasury Regulations Section 1.148-1(e)(2)(iii)(A)(2) or (B)(2), as applicable.

"Remarketing Fee" means the amount specified in Exhibit F of this Agreement.

"Remarketing Non-Default Termination Event" has the meaning specified in Section 9(c) of this Exhibit C.

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

(c) 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 Day-Ahead Market Price during the Initial EPS Energy Period and (B) the Day-Ahead Average Price during any EPS Energy Period subsequent to the Initial EPS Energy Period. Seller shall pay Buyer for any such Month the product of (I) the Monthly Quantity of Energy, less the amount of Assigned Energy actually delivered, multiplied by (II) the applicable price (as determined under the immediately preceding sentence). All such sales shall constitute a Private Business Sale and shall be reflected on the Private Business Sales Ledger. Buyer shall notify Seller if and to the extent the proceeds from such Private Business Sales are applied to amounts owed by the Project Participant pursuant to Section 7.5 of the Power Supply Contract, and, to the extent so applied, such proceeds shall remediate such Private Business Sales and be entered as debits on the Private Business Sales Ledger.

(b) Remarketing of Base Energy. The following provisions shall apply to the remarketing of Base Energy by Seller:

(i) Seller shall use Commercially Reasonable Efforts to remarket or cause to be remarketed all Base Energy specified for remarketing. In exercising such

Commercially Reasonable Efforts, Seller shall first attempt to remarket or cause to be remarketed all Energy specified in a Remarketing Notice in Qualified Sales and then, if Seller is unable to so remarket all of such Energy for such purposes, in Non-Private Business Sales. If Seller is unable to remarket all or any portion of the Energy designated in a Remarketing Notice, then Seller shall purchase such Energy for its own account at the prices set forth in Section 5(b)(v) of this Exhibit C as if such Energy had been remarketed to it.

(ii) Seller shall not be required to remarket any Base Energy at a net price to Seller (after deducting all transportation and transmission costs and all other costs) that is anticipated to be less than:

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) the Project Participant is not in default under its Power Supply Contract, (B) such Project Participant has exercised Commercially Reasonable Efforts (as determined by Special Tax Counsel (as defined in the Bond Indenture)) to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement and (C) Seller is remarketing such Project Participant's portion of the Contract Quantity because an EPS Energy Period is not in effect, then:

A. Seller shall purchase Energy for its own account and shall pay Buyer the product of (A) the quantity of such Energy purchased for its own account and (B) the Day-Ahead Market Price;

B. Proceeds received by Buyer under this Section 5(b)(iii) that exceed the amount Buyer would have received for the same quantity of Energy at the Net Participant Price shall be deposited in the Participant Rebate Account (as defined in the Bond Indenture) of the Energy Remarketing Reserve Fund;

C. the Project Participant shall be required under Section 7.5 of the Power Supply Contract to exercise Commercially Reasonable Efforts to purchase Energy for a Qualifying Use to remediate any Ledger Entry resulting from Seller's purchase of Energy; and

D. if any Ledger Entry has not been reversed within twelve Months of the date of any such Ledger Entry, Seller thereafter shall exercise Commercially Reasonable Efforts to remediate any such Ledger Entry by making a Qualified Sale to the Project Participant or any other Municipal Utility;

provided that, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time the Project Participant has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder

consistent with the applicable Assignment Letter Agreement, the provisions of this Section 5(b)(iii) shall not apply and any Ledger Entries resulting from Seller's remarketing of Base Energy in such case may not be remediated by Project Participant.

(iv) Proceeds from Qualified Sales and Non-Private Business Sales.

A. For any Energy specified in a Monthly Remarketing Notice that Seller remarkets in a Qualified Sale or Non-Private Business Sale, Seller shall deliver to Buyer the actual proceeds less the Remarketing Fee per MWh sold, *provided* that the aggregate amount delivered by Seller under this clause (A) for any Month shall not be less than the aggregate quantity so remarketed during such Month multiplied by the Net Participant Price.

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

P = Q 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 applicable Fixed Price for Energy (as defined in the Buyer Swap), minus (ii) the Specified Discount then in effect.

## SCHEDULE OF EARLY TERMINATION PAYMENTS

[To be attached.]

# EXHIBIT D-1

## TERMINATION PAYMENT ADJUSTMENT SCHEDULE

(To be attached pursuant to Section 17.8 as required.)

**EXHIBIT E**

**FORM OF MORGAN STANLEY GUARANTEE**

Morgan Stanley

1585 BROADWAY

NEW YORK, NY 10036-8293

[DATE]

To: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901

Ladies and Gentlemen:

In consideration of California Community Choice Financing Authority (hereinafter "Counterparty") having entered into or entering into (i) that certain Prepaid Energy Sales Agreement, dated as of [____], 2022, with Morgan Stanley Energy Structuring, L.L.C. (hereinafter "Obligor") (the "Prepaid Agreement") and (ii) that ISDA Master Agreement, dated as of [____], 2022, the Schedule, dated as of [____], 2022, and Confirmation, dated as of [____], 2022, with Obligor (together with the Prepaid Agreement, the "Agreements"), Morgan Stanley, a Delaware corporation (hereinafter "Guarantor"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreements, the due and punctual payment of all amounts payable by Obligor under the Agreements when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination or otherwise, in accordance with, and subject to, the terms of the Agreements and giving effect to any applicable grace period. Upon failure of Obligor punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this guarantee (the "Guarantee") (or to such other address as Guarantor may specify in writing), Guarantor agrees to pay or cause to be paid such amounts owed by Obligor; *provided* that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee; *provided further* that any payment made by Guarantor hereunder will be made directly to The Bank of New York Mellon Trust Company, N.A., as trustee under the Bond Indenture (as defined in the Prepaid Agreement), or to any successor trustee under the Bond Indenture and that such payment shall be deemed to be a payment to Counterparty hereunder. This Guarantee is of payment and not of collection.

Guarantor hereby agrees that its obligations hereunder shall be continuing and unconditional and will not be discharged except by complete payment of the amounts payable under the Agreements, irrespective of (1) any claim as to the Agreements' validity, regularity or enforceability or the lack of authority of Obligor to execute or deliver the Agreements; or (2) any change in or amendment

to the Agreements; or (3) any waiver or consent by Counterparty with respect to any provisions thereof; or (4) the absence or existence of any action to enforce the Agreements, or the recovery of any judgment against Obligor or of any action to enforce a judgment against Obligor under the Agreements; or (5) the dissolution, winding up, liquidation or insolvency of Obligor, including any discharge of obligations therefrom; or (6) any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

Guarantor hereby waives diligence, presentment, demand on Obligor for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against Obligor and protest or notice, except as provided for in the Agreements with respect to amounts payable by Obligor. If at any time payment under the Agreements is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of Obligor or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

Guarantor represents to Counterparty, as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

2. its execution, delivery and performance of this Guarantee has been and remains duly authorized by all necessary corporate action and does not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' right or by general equity principles.

Each of the provisions contained in this Guarantee shall be severable and distinct from one another and if one or more of such provisions are now or hereafter becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected, prejudiced or impaired thereby.

By accepting this Guarantee and executing the Agreements, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guarantee, *provided* that Guarantor shall be entitled to enforce or to

receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by Obligor under the Agreements.

This Guarantee shall expire or terminate, as applicable, on the earliest of (i) [_____], 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: | The period beginning on [____], 2022 and ending on [____], 20[__] or earlier upon the Early Termination Date |
| Minimum Discount: | $[___]/MWh for the Initial Reset Period (as defined in the Re-Pricing Agreement), and thereafter an amount no less than $[___]/MWh |
| Monthly Discount: | $[___]/MWh during the Initial Reset Period (as defined in the Re-Pricing Agreement), and for each Month of a Reset Period thereafter, the Monthly Discount portion of the Available Discount for such Reset Period determined by the Calculation Agent (as defined in the Bond Indenture) pursuant to the Re-Pricing Agreement |
| Prepayment: | $[___] |
| Prepayment Outside Date: | [____], 2022 |
| Remarketing Fee: | $0.50/MWh for any Energy remarketed pursuant to a Monthly Remarketing Notice |
| Specified Fixed Price: | $[___]/MWh |
| Specified Discount: | For Energy delivered [____], 2022 – [____], 20[__]: $[___]/MWh<br><br>For Energy delivered [____], 20[__] – [____], 20[__]: to be the Available Discount (as defined in the Re-Pricing Agreement) for such Reset Period |
| ESR Fee: | $[___]/MWh |
| Swap Fee: | $[___]/MWh |

**EXHIBIT G**

**RECEIVABLES PURCHASES**

[To be attached.]

# RE-PRICING AGREEMENT

This RE-PRICING AGREEMENT, dated as of [____], 2022 (this "Agreement"), is entered into by and between Morgan Stanley Energy Structuring, L.L.C. ("MSES") and California Community Choice Financing Authority ("Issuer"). MSES and Issuer are sometimes referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth in Section 1.

WHEREAS, Issuer is issuing the Series 2022A Bonds pursuant to the Indenture in order to provide funds to acquire the Energy Supply from MSES pursuant to the Prepaid Agreement; and

WHEREAS, in connection with its acquisition of the Energy Supply, Issuer has entered into the Power Supply Contract with the Project Participant providing for the sale of the Energy Supply by Issuer to the Project Participant; and

WHEREAS, the price payable by the Project Participant for the Energy Supply includes a discount to the index price set forth in the applicable Power Supply Contract, which discount has been established for the Initial Reset Period therein and will be re-established for each subsequent Reset Period under the terms and conditions set forth herein; and

WHEREAS, under the terms of the Power Supply Contract, prior to each Reset Period after the Initial Reset Period, the Project Participant may elect to have its Energy Supply remarketed if the Available Discount established for such Reset Period is less than the Minimum Discount specified in the Power Supply Contract;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions. When used herein, the following capitalized terms shall have the following meanings:

"Additional Reduction Amount" has the meaning set forth in Appendix A.

"Alternative Supplier" means any Person that (i) has a Credit Rating equal to or better than Morgan Stanley's Credit Rating and (ii) agrees that, if the Prepaid Agreement and other related agreements entered into by Prepaid Supplier (the "Prepaid Supplier Documents") are novated to it, it will deliver an opinion or opinions of counsel in a form acceptable to Issuer, Bond Counsel (as defined in the Bond Indenture) and Swap Counterparty (as defined in the Prepaid Contract) that each of the Prepaid Supplier Documents are duly authorized by and enforceable against it.

"Available Discount" has the meaning specified in the Power Supply Contract and also means, for each Reset Period, the final amount determined by MSES as of the applicable Bond Pricing Date pursuant to Appendix A, expressed in cents per MWh (rounded down to the nearest one-half cent).

"Bond Closing Date" means the date on which the Bonds are issued pursuant to the Indenture.

"Bond Pricing Date" means, for any Reset Period, the date upon which the interest rate and yield on the Bonds is established pursuant to the applicable bond remarketing agreement or bond purchase agreement.

"Bonds" has the meaning set forth in the Indenture.

"Business Day" has the meaning set forth in the Indenture.

"Contract Quantity" has the meaning set forth in the Prepaid Agreement.

"Credit Rating" means the credit rating assigned by of Moody's Investors Service, Inc. and Fitch Ratings, Inc. (and any successors thereto) to a Person's senior, unsecured long-term debt obligations (not supported by third party credit enhancements).

"Delivery Period" has the meaning set forth in the Prepaid Agreement.

"Delivery Period Implied Rate" has the meaning set forth in Appendix A.

"Determination Month" has the meaning set forth in Appendix A.

"Energy" has the meaning set forth in the Prepaid Agreement.

"Energy Supply" means with respect to the Prepaid Agreement, the aggregate Contract Quantities of Energy to be delivered by MSES under the Prepaid Agreement.

"Estimated Available Discount" has the meaning set forth in Section 5(a).

"Excess Amount" is the positive difference, if any, of the Prior Remaining Energy Value less the New Remaining Delivery Cost.

"Fixed Price" means $[___]/MWh.

"Fixed Rate" has the meaning set forth in Appendix A.

"Guarantor" means Morgan Stanley, a Delaware corporation, in its capacity as the guarantor of MSES's payment obligations under the Prepaid Agreement.

"Indenture" means the Trust Indenture, dated as of the first day of the month of the Bond Closing Date, between Issuer and the Trustee, as the same may be amended or supplemented from time to time pursuant to one or more Supplemental Indentures, or any other trust indenture under which refunding bonds are issued and secured.

"Initial Reset Period" means the period from [_____], 2022 – [_____], 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 Contract.

"Monthly Contract Quantity" means, for any month, the aggregate Contract Quantities scheduled to be delivered by MSES to Issuer under the Prepaid Agreement for such month.

"Monthly Discount" has the meaning set forth in Section 6(b).

"Morgan Stanley Guarantee" has the meaning set forth in the Prepaid Agreement.

"MSES" has the meaning set forth in the preamble.

"MWh" means megawatt-hour.

"New Remaining Delivery Cost" has the meaning set forth in Appendix A.

"New Reset Period" has the meaning set forth in Appendix A.

"Old Reset Period" has the meaning set forth in Appendix A.

"Outstanding" has the meaning set forth in the Indenture.

"Participant Notification Deadline Day" means, with respect to each Reset Period, the last day on which Issuer is permitted to provide a notice of the Estimated Available Discount to the Project Participant under the Power Supply Contract.

"Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or government agency.

"Prepaid Agreement" means the Prepaid Energy Sales Agreement, dated as of [____], 2022, between MSES and Issuer, as the same may be amended or supplemented in accordance with its terms.

"Prepaid Supplier Documents" has the meaning specified in the definition of Alternative Supplier.

"Prior Remaining Energy Value" has the meaning set forth in Appendix A.

"Project Participant" has the meaning set forth in the Indenture.

"Power Supply Contract" means, individually or collectively, any or all of the separate Energy Supply Agreements, relating to the Energy Project as defined in the Indenture, between Issuer and the Project Participant, as each may be amended from time to time.

"Re-pricing Date" means, for any Reset Period, any Business Day not earlier than ninety (90) days prior to the earlier of (i) the date on which the Bonds then Outstanding may be called for optional redemption in accordance with the Indenture and (ii) the day following the last day of the Reset Period then in effect.

"Remaining Delivery Cost" has the meaning set forth in Appendix A.

"Remaining Energy Value" has the meaning set forth in Appendix A.

"Reset Period" means the Initial Reset Period and each period determined pursuant to Section 3.

"Reset Period Implied Rate" has the meaning set forth in Appendix A.

"Series" means Bonds designated as a Series and authorized to be issued by Issuer pursuant to Section 2.01 of the Indenture.

"Series 2022A Bonds" has the meaning set forth in the Indenture.

"SOFR" means the Secured Overnight Financing Rate administered by the Federal Reserve Bank of New York (or a successor administrator) and provided on the New York Fed's Website.

"Supplemental Indenture" means any indenture supplemental to or amendatory of the Indenture executed and delivered by Issuer and the Trustee in accordance with Article X of the Indenture.

"Termination Payment" has the meaning set forth in the Prepaid Agreement.

"Termination Payment Adjustment Schedule" has the meaning set forth in the Prepaid Agreement.

"Trustee" means the trustee under the Indenture and its successors and assigns.

Section 2. Purpose of Agreement and Intention of Parties. The Parties are entering into this Agreement in connection with the execution and delivery of the Indenture, the Prepaid Agreement and the other transaction documents for the purpose of establishing the methodology for determining the Available Discount for each Reset Period following the Initial Reset Period.

Section 3. Reset Periods. Each Reset Period shall commence on the next day that follows the last day of the Initial Reset Period or, subsequently, the immediately prior Reset Period. The length of each Reset Period shall be the remaining term of the Delivery Period unless MSES elects, in its sole discretion following consultation with Issuer, a shorter period, which period may not be shorter than the lesser of (a) three (3) years or (b) the remaining term of the Delivery Period without Issuer's consent; *provided further* that:

(i) The Initial Reset Period and each subsequent Reset Period (other than the final Reset Period) shall end the last day of the month preceding the end of the applicable

Interest Rate Period. For example, if the Interest Rate Period ends October 31, the last day of the Reset Period would end September 30, and

(ii) the final Reset Period shall end on the last day of the Delivery Period.

Section 4. Morgan Stanley Guarantee. The Morgan Stanley Guarantee terminates on the earliest of (i) the end of the Delivery Period; (ii) the earlier termination of the Prepaid Agreement (including through the date of any Termination Payment thereunder); and (iii) the last day of any Reset Period, if the Guarantor provides written notice of termination of the Morgan Stanley Guarantee. Unless the Morgan Stanley Guarantee is terminated, the Morgan Stanley Guarantee shall remain in effect for the next Reset Period at the time of, or prior to, the delivery of any refunding or remarketing bonds.

Section 5. Estimated Available Discount; Alternative Suppliers.

(a) Initial Estimated Available Discount.

(i) Initial Estimate by MSES. Not later than (A) eight months prior to a Mandatory Purchase Date that occurs in 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 Participant. Issuer shall notify the Project Participant of the Estimated Available Discount and any updates thereto under the relevant provisions of the Power Supply Contract. Unless MSES and Issuer otherwise agree, in any notice of Estimated Available Discount provided to a Project Participant prior to the Participant Notification Deadline Day, Issuer shall clearly indicate in such notice that the notice is provisional and is not intended to, and does not, trigger a Project Participant's right to provide a Remarketing Notice (as defined in the Power Supply Contract).

Section 6. Determination of Available Discount and Monthly Discount.

(a) MSES shall determine on the Bond Pricing Date the Available Discount for such Reset Period (expressed in cents per MWh and rounded down to the nearest one-half cent) in accordance with the methodology set forth in Appendix A.

(b) For each Reset Period after the Initial Reset Period, MSES shall determine the monthly discount portion of the Available Discount for such Reset Period (the "Monthly

Discount"). Issuer and MSES then shall mutually agree upon the projected Annual Refund (as defined in the Power Supply Contract) for such Reset Period, which shall be determined consistent with Section 3.2(c) of the Power Supply Contract and shall be the remaining portion of the Available Discount. MSES and Issuer acknowledge that the purpose of retaining a portion of the Available Discount for distribution in the Annual Refund is to mitigate the risk to bondholders of reduced or lost investment income on any investments held under the Indenture.

Section 7. Termination Payment Adjustment Schedule; Monthly Quantity Changes.

(a) For any Reset Period, MSES may modify the Termination Payment Adjustment Schedule to reflect changes in the Remaining Energy Values set forth on Attachment 1 to Appendix A and otherwise, provided that such modifications are sufficient to meet the redemption requirements of the Bonds to be sold for such Reset Period.

(b) Issuer and MSES agree that the Prepaid Agreement will be amended to reflect any reductions to Monthly Contract Quantities determined pursuant to Appendix A.

Section 8. Timing. The dates and time intervals stated in this Agreement may be waived or altered by the mutual agreement of the Parties.

Section 9. Termination. This Agreement shall terminate automatically upon termination of the Prepaid Agreement for any reason, including but not limited to election by the Guarantor to terminate the Morgan Stanley Guarantee pursuant to its terms. For the avoidance of doubt, nothing in this Agreement or any other agreement restricts the ability of Guarantor to terminate the Morgan Stanley Guarantee as set forth in the Morgan Stanley Guarantee, effective as of the end of a Reset Period, which election to terminate may be made by Guarantor in its sole and absolute discretion. Any such termination shall not be considered a failure by MSES to act in good faith hereunder, regardless of whether the Parties have previously discussed pricing that may apply to any Reset Period or otherwise taken the steps required under this Agreement. MSES shall not be required to provide estimates hereunder or otherwise take or continue the steps toward determining pricing hereunder for any Reset Period if the Guarantor exercises its right to terminate the Morgan Stanley Guarantee.

Section 10. Communications.

(a) All notices, requests and other communications shall be in writing (including facsimile, electronic mail or other electronic means) provided to the address and/or electronic mail address set forth below:

*MSES*: As provided in the Prepaid Agreement

*Issuer*: As provided in the Prepaid Agreement

(b) Each Party may change the address for communications to it pursuant to the terms of the referenced agreement, which notice shall be effective when delivered at the address specified herein.

Section 11. Miscellaneous.

(a) *Miscellaneous*. Article X [Dispute Resolution] and Sections 18.3 [Entirety; Amendments], 18.4 [Governing Law], 18.5 [Non-Waiver], 18.6 [Severability], 18.7 [Exhibits], 18.9 [Relationship of Parties], 18.12 [Limitation of Liability] and 18.13 [Counterparts] of the Prepaid Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

(b) *Amendments to Power Supply Contract and Indenture*. Issuer shall not agree to or consent to any modification, supplement, amendment or waiver of any provision of the Power Supply Contract or the Indenture that affects the meaning of any defined term herein or the operation of any provision hereof.

(c) *Assignment*. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party hereto without the prior written consent of the other Party; provided that each Party acknowledges and agrees that the other Party shall assign all of its right, title and interest in, to and under this Agreement in connection with any assignment by either Party of its right, title and interest in, to and under the Prepaid Agreement to the assignee thereof, which assignment shall constitute a novation.

***[Separate Signature Page(s) Attached]***

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first above written.

MORGAN STANLEY ENERGY
STRUCTURING, L.L.C.

By:_____
Name:_____
Title:_____

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By:_____
Name:_____
Title:_____

# Appendix A

MSES will undertake the following steps in determining the Available Discount for any Reset Period (each, a "New Reset Period"):

- Step 1: Determine the "Prior Remaining Energy Value"
  - MSES will determine the Remaining Energy Value for the last month of the current Reset Period (the "Old Reset Period") based on Attachment 1 hereto, as such Attachment initially existed or was last updated at the beginning of the prior Reset Period (the "Prior Remaining Energy Value").
  - "Remaining Energy Value" means, for any month, the amount set forth on Attachment 1 of Appendix A as the "Remaining Energy Value" for such month, as Attachment 1 may be updated pursuant to this Appendix A in connection with the establishment of any new Reset Period.

- Step 2: MSES will specify the length of the New Reset Period pursuant to Section 3 of the Agreement

- Step 3: MSES will specify a Reset Period Implied Rate for the New Reset Period and a Delivery Period Implied Rate
  - "Reset Period Implied Rate" means, for any Reset Period other than the Initial Reset Period, a fixed rate offered by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period at which MSES or Guarantor determines (in its sole discretion) that it would be able to acquire, as of the date of determination, funding from other sources comparable to the funding provided by the Prepaid Agreement as of the date of determination. In determining such a rate, the Guarantor and MSES may consider all relevant factors, including (x) the nature of the source of funding provided by the Prepaid Agreement, including any applicable regulatory or capital charges, (y) the tenor and possibility of early termination of the Prepaid Agreement, and (z) any other unique attributes of the Prepaid Agreement funding relative to other sources available to the Guarantor.
  - "Delivery Period Implied Rate" means, for any remaining portion of the Delivery Period that is not covered by a Reset Period, a fixed rate determined by MSES in its sole and absolute discretion as of the Bond Pricing Date for such Reset Period which MSES or Guarantor determines (in its sole discretion) represents an appropriate taxable market discount rate as of the Bond Pricing Date.

- Step 4: Determine the "New Remaining Delivery Cost"
  - MSES will determine the "Remaining Delivery Cost" for each month of the Delivery Period after the Old Reset Period. The Remaining Delivery Cost for the first month of the New Reset Period is the "New Remaining Delivery Cost".

- "Remaining Delivery Cost" means, for the first month of any New Reset Period (the "Determination Month"), an amount calculated by MSES equal to the net present value of a stream of monthly payments equal to the Monthly Contract Quantities multiplied by the Fixed Price for the remainder of the Delivery Period (including such Determination Month), discounted at the Reset Period Implied Rate for the New Reset Period and the Delivery Period Implied Rate for the remainder of the Delivery Period after the New Reset Period.

- Step 5: Additional Reduction Amount or changing Monthly Contract Quantities
  - If the Prior Remaining Energy Value is less than the New Remaining Delivery Cost:
    - If the Reset Period will go to the end of the Delivery Period, MSES will reduce the Monthly Contract Quantities to zero in as many months as necessary at the end of the Delivery Period (and, to the extent necessary, reduce the Monthly Contract Quantities in the last remaining month of the Reset Period to a quantity greater than zero) such that the Prior Remaining Energy Value is equal to the New Remaining Delivery Cost.
    - If the Reset Period will end prior to the end of the Delivery Period, MSES in its sole discretion may reduce the Monthly Contract Quantities as provided above.
  - If the Prior Remaining Energy Value is greater than the New Remaining Delivery Cost:
    - Subject to the following bullet, MSES will pay to Issuer the amount, if any, by which (A) the Prior Remaining Energy Value exceeds (B) the New Remaining Delivery Cost (the "Additional Reduction Amount") on the first day of the contemplated Interest Rate Period, which payment shall be applied by Issuer to the retirement of Bonds.
    - Notwithstanding the immediately prior bullet, MSES may elect to retain a portion of the Excess Amount if (i) the Reset Period will end prior to the end of the Delivery Period, (ii) such retention does not reduce the Available Discount, and (iii) doing so is consistent with the amortization requirement of the Bonds. If MSES elects to retain a portion of such Excess Amount pursuant to the foregoing proviso, the Additional Reduction Amount shall be the portion of such Excess Amount that MSES elects to pay.
  - Any Additional Reduction Amount or changes in Monthly Contract Quantities will then be included in calculating the New Remaining Delivery Cost. An Additional Reduction Amount will reduce the Prior Remaining Energy Value for this purpose.
  - Once the New Reset Period goes into effect, Attachment 1 hereto will be amended such that the Remaining Energy Value for each month in the New Reset Period and the remainder of the Delivery Period is equal to the

Remaining Delivery Cost for such month as determined under Step 4 and updated under this Step 5.

- Step 6: Determine the Fixed Rate for the Bonds for the term of such contemplated Interest Rate Period
    - The remarketing agent or underwriter of the Bonds for such contemplated Interest Rate Period will specify the Fixed Rate.
    - "Fixed Rate" means, for any New Reset Period, the fixed rate or rates of interest payable by Issuer with respect to a Series of Bonds or, in the case of a Series of Variable Rate Bonds (as defined in the Indenture), the fixed rate payable by Issuer under the related fixed rate swap transaction, which Fixed Rates will be determined on the Bond Pricing Date at a rate sufficient to enable all the Bonds to be sold or remarketed on such Bond Pricing Date in accordance with the Indenture (which sale price may include a premium or discount to par), as determined based on market information then available.

- Step 7: Determine Monthly Discount Portion of Available Discount
    - MSES will determine the Monthly Discount portion of the Available Discount for the Reset Period based on the expected differences between monthly revenues and monthly debt service and other obligations of the Energy Project (as defined in the Indenture).

- Step 8: Determine Annual Refund Portion of Available Discount
    - MSES and Issuer shall mutually agree upon the projected Annual Refund (as defined in the Power Supply Contract) for the Reset Period, which shall be determined consistent with Section 3.2 of the Power Supply Contract and shall be the remaining portion of the Available Discount.

**Attachment 1 to Appendix A**

**Remaining Energy Values**

(To be attached.)

# PRELIMINARY OFFICIAL STATEMENT DATED [_____], 2022

**NEW ISSUE - BOOK-ENTRY ONLY** **RATING: (SEE "RATING" HEREIN)**

*In the opinion of 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]/[KESTRAL LOGO] | **$1,000,000,000*** **CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS** | | |
|---|---|---|---|
| | **$_____ SERIES 2022A-1 (GREEN BONDS) (TERM RATE)** | **$_____ SERIES 2022A-2 (GREEN BONDS) (SIFMA INDEX RATE)** | **$_____ SERIES 2022A-3 (GREEN BONDS) (SOFR INDEX RATE)** |

**DATED: Date of Delivery** **DUE: As shown on the inside cover**

California Community Choice Financing Authority (*"CCCFA"*) is issuing its Clean Energy Project Revenue Bonds, Series 2022A-1 (Green Bonds) (Term Rate) (the "*Series 2022A-1 Bonds*"), Clean Energy Project Revenue Bonds, Series 2022A-2 (Green Bonds) (SIFMA Index Rate) (the "*Series 2022A-2 Bonds*") and its Clean Energy Project Revenue Bonds, Series 2022A-3 (Green Bonds) (SOFR Index Rate) (the "*Series 2022A-3 Bonds*" and, together with the Series 2022A-1 Bonds and Series 2022A-2, the *"Bonds"*), under a Trust Indenture between CCCFA and The Bank of New York Mellon Trust Company, N.A., as Trustee. The Bonds will be issued in book-entry form through the facilities of The Depository Trust Company (*"DTC"*). Purchases of the Bonds will be made in book-entry form through DTC participants in denominations of $5,000 or any multiple thereof. Payments of principal of, premium, if any, and interest on the Bonds will be made directly to DTC and will subsequently be disbursed to DTC participants and thereafter to Beneficial Owners of the Bonds, all as described herein. Capitalized terms used and not otherwise defined on this cover page have the meanings set forth herein.

From their Initial Issue Date to and including [_____], 20[__]* (the *"Initial Interest Rate Period"*), the Series 2022A-1 Bonds will bear interest in a Term Rate Period, the Series 2022A-2 Bonds will bear interest in a SIFMA Index Rate Period and the Series 2022A-3 Bonds will bear interest in a SOFR Index Rate Period, as shown on the inside cover page and described herein. During the Initial Interest Rate Period, interest on the Series 2022A-1 Bonds is payable semiannually on each [_____] 1 and [_____] 1, commencing [_____] 1, 20[__]* and interest on the Series 2022A-2 Bonds and the Series 2022A-3 Bonds is payable on the first Business Day of each month, commencing on the first Business Day of [_____] 20[__]*. The Bonds are subject to optional and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds of each Series maturing on [_____] 1, 20[__] are subject to mandatory tender for purchase on [_____] 1, 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 Participant and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment (defined herein) will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley, a Delaware corporation (*"Morgan Stanley"*).

CCCFA will sell all of the Prepaid Energy acquired under the Prepaid Energy Sales Agreement to East Bay Community Energy Authority (*"EBCE"* or the *"Project Participant"*) under a Power Supply Contract (the *"Power Supply Contract"*) between CCCFA and the Project Participant. Under the terms of the Prepaid Energy Sales Agreement and the Power Supply Contract, the Project Participant may assign its rights to the delivery of EPS Compliant Energy under existing and future power purchase agreements to Morgan Stanley Capital Group, Inc. (*"MSCG"*) for ultimate delivery of such EPS Compliant Energy from such agreements to the Project Participant. The Project Participant has entered into a limited assignment agreement relating to specific power purchase agreement(s) as of the Date of Delivery.

The Bonds have been designated "Green Bonds". See "DESIGNATION OF BONDS AS GREEN BONDS" and Second Opinion by Kestrel Verifiers set forth herein.

THE PAYMENT OF THE BONDS IS NOT GUARANTEED BY THE ENERGY SUPPLIER, MSCG, MORGAN STANLEY, THE UNDERWRITER, CCCFA OR ITS MEMBERS, OR THE PROJECT PARTICIPANT. THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS OF CCCFA, THE PROJECT PARTICIPANT, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION OF THE STATE AND NEITHER THE FAITH AND CREDIT OF CCCFA NOR THE



* Preliminary, subject to change.

TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO PAYMENTS PURSUANT TO THE INDENTURE OR THE BONDS. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE.

This Official Statement describes the Bonds only during the Initial Interest Rate Period and must not be relied upon if the Bonds are converted to any other interest rate period. The purchase and ownership of the Bonds involve investment risk and may not be suitable for all investors. This cover page is not intended to be a summary of the terms of or the security for the Bonds. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision with respect to the Bonds, giving particular attention to the matters discussed under "INVESTMENT CONSIDERATIONS" herein.

*The Bonds are offered, when, as and if issued by CCCFA and accepted by the Underwriter, subject to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CCCFA by its General Counsel, for the Project Participant by Chapman and Cutler LLP; for the Energy Supplier by Haynes and Boone, LLP; and for the Underwriter by Nixon Peabody LLP. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about [_____], 2022.*

**Morgan Stanley**

This Official Statement is dated _____, 2022.

**$1,000,000,000***
**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**
**CLEAN ENERGY PROJECT REVENUE BONDS**

**MATURITY DATES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NUMBERS[1]**

**$_____ SERIES 2022A-1 BONDS**
**(TERM RATE)**

**$_____ SERIAL BONDS**

| MATURITY DATE | PRINCIPAL AMOUNT | INTEREST RATE | YIELD | CUSIP |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

$_____ ____% Term Bond due [_____] 1, 20[__][2], Yield: ____%, CUSIP _____

**$_____ SERIES 2022A-2 BONDS**
**(SIFMA INDEX RATE)**

| MATURITY DATE | INDEX | APPLICABLE SPREAD[3] | CUSIP |
|---|---|---|---|
| [_____] 1, 20[__][2] | SIFMA Index | __ basis points | _____ |

**$_____ SERIES 2022A-3 BONDS**
**(SOFR INDEX RATE)**

| MATURITY DATE | APPLICABLE FACTOR[4] | INDEX | APPLICABLE SPREAD[3] | CUSIP |
|---|---|---|---|---|
| [_____] 1, 20[__][2] | | SOFR Index | | |

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* Preliminary; subject to change.

1 CUSIP® is a registered trademark of the American Bankers Association. The CUSIP numbers listed above have been provided by CUSIP Global Services, managed on behalf of the American Bankers Association by FactSet Research Systems Inc., and are included solely for the convenience of bondholders only. CCCFA and the Underwriter make no representation with respect to such numbers or undertake any responsibility for their accuracy. The CUSIP numbers are subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to a refunding in whole or in part of the Bonds.

2 The Bonds of each Series maturing on [_____] 1, 20[__] are required to be tendered for purchase on [_____] 1, 20[__]*.

3 Applicable Spread means, (i) with respect to the Series 2022A-2 Bonds, the margin added to the SIFMA Municipal Swap Index to determine the SIFMA Index Rate and (ii) with respect to the Series 2022A-3 Bonds, the margin added to the product of the Applicable Factor and the SOFR Index to determine the Secured Overnight Financing Rate. The Applicable Spread will remain constant for the duration of the initial SIFMA Index Rate Period and the initial SOFR Index Rate Period. See "THE BONDS – *Series 2022A-2 Bonds*" and "Series 2022A-3 Bonds" herein.

4 Applicable Factor means the percentage or factor of the SOFR Index used to calculate the SOFR Index Rate for the Series 2022A-3 Bonds. The Applicable Factor will remain constant for the duration of the initial SOFR Index Rate Period. See "THE BONDS – Series 2022A-3 Bonds" herein.

The information contained in this Official Statement has been obtained from CCCFA, the Project Participant, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparty, DTC and other sources believed to be reliable. This Official Statement is submitted in connection with the sale of the securities described herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement speaks only as of its date and the information contained in this Official Statement is subject to change without notice and neither the delivery of this Official Statement nor any sale made by means of it shall, under any circumstances, create any implication that there have not been changes in the affairs of any party since the date of this Official Statement.

No broker, dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such information or representations must not be relied upon as having been authorized by CCCFA or the Underwriter. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

The Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state, municipal or other government entity or agency has or will have passed upon the adequacy of this Official Statement or, except for CCCFA, approved the Bonds for sale.

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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.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE MARKET PRICES OF THE BONDS. SUCH TRANSACTIONS, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

CCCFA and the Project Participant each maintain a website and certain social media accounts. However, the information presented on such website and on such accounts is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the Bonds. References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12 of the United States Securities and Exchange Commission.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used, such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. CCCFA does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**

**1125 TAMALPAIS AVENUE**
**SAN RAFAEL, CA 94901**

**BOARD OF DIRECTORS**

Nick Chaset, Chair

Girish Balachandran, Vice Chair

Garth Salisbury, Member

Tom Habashi, Member

**MANAGEMENT**

Garth Salisbury, Treasurer/Controller

Michael Callahan, General Counsel

**MEMBERS**

Central Coast Community Energy

East Bay Community Energy Authority

Marin Clean Energy

Silicon Valley Clean Energy Authority

**PROJECT PARTICIPANT**

East Bay Community Energy Authority

**GREEN BONDS REVIEWER**

Kestrel Verifiers

**BOND COUNSEL**

Orrick Herrington & Sutcliffe LLP

**PROJECT PARTICIPANT'S COUNSEL**

Chapman and Cutler LLP

**TRUSTEE**

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

**FINANCIAL ADVISOR**

PFM Financial Advisors LLC

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**OFFICIAL STATEMENT**

**$1,000,000,000***
**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**
**CLEAN ENERGY PROJECT REVENUE BONDS**
**SERIES 2022 EBCE**

## INTRODUCTION

This Official Statement, which includes the cover page and appendices attached hereto, contains information concerning (a) California Community Choice Financing Authority (*"CCCFA"* or the *"Issuer"*), (b) CCCFA's Clean Energy Project Revenue Bonds, Series 2022A-1 (Green Bonds) (Fixed Rate) (the "*Series 2022A-1 Bonds*"), CCCFA's Clean Energy Project Revenue Bonds, Series 2022A-2 (Green Bonds) (SIFMA Index Rate) (the "*Series 2022A-2 Bonds*") and CCCFA's Clean Energy Project Revenue Bonds, Series 2022A-3 (Green Bonds) (SOFR Index Rate) (the "*Series 2022A-3 Bonds*" and, together with the Series 2022A-1 Bonds and the Series 2022A-2 Bonds, the *"Bonds"*), being issued in the aggregate principal amount of $1,000,000,000* and (c) the Clean Energy Project (defined below) being financed with proceeds of the Bonds. Capitalized terms used herein have the meanings shown in APPENDIX B.

*California Community Choice Financing Authority*

California Community Choice Financing Authority is a joint powers agency formed by the Project Participant, Silicon Valley Clean Energy Authority, Marin Clean Energy, and Central Coast Community Energy, each a community choice aggregator organized and existing under the laws of the State of California (the *"State"*). CCCFA is organized and existing pursuant to the laws of the State with the power to issue the Bonds and enter into the transaction documents described herein. CCCFA is authorized to undertake all actions permitted by Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the *"Act"*), including the purchase of the Prepaid Energy and the sale thereof to the Project Participant, and the entry into of the related agreements described herein (referred to herein as the *"Clean Energy Project"*). See "CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY" and "COMMUNITY CHOICE AGGREGATORS" herein.

*The Bonds*

The Bonds will be issued in three separate Series:

(a) $_____ Clean Energy Project Revenue Bonds, Series 2022A-1 (Term Rate) (the *"Series 2022A-1 Bonds"*),

(b) $_____ Clean Energy Project Revenue Bonds, Series 2022A-2 (SIFMA Index Rate) (the *"Series 2022A-2 Bonds"*), and

* Preliminary; subject to change.

(c) $_____ Clean Energy Project Revenue Bonds, Series 2022A-3 (SOFR Index Rate) (the *"Series 2022A-3 Bonds"*).

The Series 2022A-2 Bonds and the Series 2022A-3 Bonds are sometimes referred to herein as the *"Index Rate Bonds."*

From their Initial Issue Date to and including [_____], 20[__]* (the *"Initial Interest Rate Period"*):

(a) the Series 2022A-1 Bonds will bear interest in a Term Rate Period, with interest payable semiannually on each [_____] 1 and [_____] 1, commencing [_____] 1, 20[__]*,

(b) the Series 2022A-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 [_____] 20[__]*, and

(c) the Series 2022A-3 Bonds will bear interest at the SOFR Index Rate in a SOFR Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of [_____] 20[__]*;

all as shown on the inside cover page and as described herein. See "THE BONDS".

The Bonds are subject to optional redemption and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds maturing on [_____] 1, 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 Bonds on the Mandatory Purchase Date is equal to the principal amount thereof and is payable in immediately available funds. Under the Indenture, a "Failed Remarketing" will occur if (a) there is a failure on the Mandatory Purchase Date to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem the Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) either (i) on the last day of the second calendar month preceding the Mandatory Purchase Date (i.e., the last day of the Initial Reset Period described below), CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) the conditions described in (b)(i) are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered into the Trust Estate by 12:00 noon, New York City time, on the fifth Business Day preceding the Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. See "THE BONDS—*Redemption*" and "—*Tender—Mandatory Tender*".

*Security for the Bonds*

The Bonds are issued pursuant to the authority contained in the Act and are issued and secured under a Trust Indenture, to be dated as of the first day of the month in which the Bonds are issued (the *"Indenture"*), between CCCFA and The Bank of New York Mellon Trust Company, N.A., as trustee (the *"Trustee"*). The Bonds are special and limited obligations of CCCFA, are payable solely from and secured

* Preliminary; subject to change.

solely by the Trust Estate pledged by the Indenture and are expected to be paid from the Revenues of the Clean Energy Project.

The Bonds and the Interest Rate Swap (hereinafter defined) are secured by a pledge of and lien on the Trust Estate established by the Indenture, which (among other things) includes CCCFA's rights under the Power Supply Contract, the Revenues, any Termination Payment payable by the Energy Supplier under the Prepaid Energy Sales Agreement, CCCFA's rights under the Receivables Purchase Provisions and the Pledged Funds. The pledge of and lien on the Trust Estate in favor of the Bonds is subject to certain provisions of the Indenture. The Bonds are expected to be paid from the Revenues which (among other things) include the revenues received by CCCFA from the sale of Prepaid Energy under the Power Supply Contract, Commodity Swap Receipts received under the CCCFA Commodity Swap and interest earnings on certain of the Funds and Accounts established by the Indenture. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Clean Energy Project. The Indenture includes provisions for the application of various other amounts under Clean Energy Project that do not constitute Revenues.

Among other funds and accounts, the Indenture establishes a Revenue Fund, an Operating Fund, a Debt Service Account in the Debt Service Fund and a Commodity Swap Payment Fund and establishes the funding requirements therefor. Scheduled Debt Service Deposits are required to made into the Debt Service Account and will be invested pursuant to the Debt Service Account Investment Agreement described herein. See "SECURITY FOR THE BONDS—*Investment of Funds*".

*The amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Purchase Price or the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that MSES, or in the event of nonpayment by MSES, payment by Morgan Stanley pursuant to the Morgan Stanley Guarantees, and the Investment Agreement Provider pay and perform their respective contract obligations when due. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture. See "INVESTMENT CONSIDERATIONS" herein.*

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS OF CCCFA, THE STATE, THE PROJECT PARTICIPANT, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER. SEE "SECURITY FOR THE BONDS".

*The Clean Energy Project*

CCCFA is issuing the Bonds to finance the Clean Energy Project, which includes the cost of acquisition of a 30-year supply of EPS Compliant Energy (the "*Prepaid Energy*") under a Prepaid Energy Sales Agreement between CCCFA and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the *"Energy Supplier"* or *"MSES"*) and the sale thereof to the Project Participant as hereinafter described. The Clean Energy Project is structured to assist the Project Participant to procure a long-term supply of EPS Compliant Energy at attractive prices. In order to do so, the Clean Energy Project includes a feature whereby the Project Participant will assign to the Energy Supplier, or to Morgan Stanley Capital Group Inc. *("MSCG")*, a portion of the Project Participant's rights and obligations (the *"Assigned*

*Rights and Obligations"*) to receive certain quantities *("Assigned Quantities"*) of EPS Compliant Energy (*"Assigned Energy"*), together with associated Green Attributes (as defined in APPENDIX B hereto), renewable energy credits *("RECs"*), capacity, or other related products (collectively, *"Assigned Products"*) under existing and future power purchase agreements *("PPAs"*). With respect to any such assignment to MSCG, MSCG will redeliver such Assigned Energy and other Assigned Products to the Energy Supplier to meet the Energy Supplier's obligations to deliver Prepaid Energy to CCCFA under the Prepaid Energy Sales Agreement. CCCFA will then deliver such Assigned Energy and other Assigned Products to the Project Participant under its Power Supply Contract. See "THE CLEAN ENERGY PROJECT".

The Prepaid Energy Sales Agreement, the Power Supply Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Energy Supplier, Morgan Stanley, the Investment Agreement Provider and the Project Participant of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are calculated to be sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap.

For a summary of certain terms and provisions of the Prepaid Energy Sales Agreement, see "THE PREPAID ENERGY SALES AGREEMENT".

*The Project Participant*

CCCFA has entered into a Power Supply Contract (the *"Power Supply Contract"*) for the sale of the Prepaid Energy with East Bay Community Energy Authority (*"EBCE"*), a joint powers authority and a community choice aggregator duly organized and existing under the laws of the State of California (the *"Project Participant"*). See "COMMUNITY CHOICE AGGREGATORS" for certain information with respect to California community choice aggregators. During the Delivery Period, the Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. For a summary of certain terms and provisions of the Power Supply Contract, see "THE POWER SUPPLY CONTRACT". See APPENDIX A for certain information with respect to the Project Participant.

*The Prepaid Energy Sales Agreement*

*General.* During the Delivery Period, the Prepaid Energy Sales Agreement provides for the monthly delivery of the Prepaid Quantities of EPS Compliant Energy. To the extent the Assigned Quantities delivered under the Initially Assigned PPAs or any future Assigned PPA for any month is less than Prepaid Quantity for such month, CCCFA will be deemed to have requested for the Energy Supplier to remarket the portion of the Assigned Quantities not delivered and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable assigned price. Other than the Energy Supplier's remarketing payment obligation, neither CCCFA nor the Energy Supplier will have any liability or other obligation to one another for any failure to schedule, receive or deliver Assigned Energy, as further discussed under "The Prepaid Energy Sales Agreement — *Assignment of Power Purchase Agreements*" herein. To the extent that EPS Compliant Energy is not available for delivery pursuant to the Prepaid Agreement, MSES's obligation to deliver the Assigned Products will be replaced with an obligation to deliver firm (LD) energy ("*Base Energy*"), and the Energy Supplier is obligated to remarket Base Energy under the Prepaid Energy Sales Agreement and

remit the proceeds thereof to CCCFA. The Energy Supplier is also obligated to make payments to CCCFA for Base Energy not delivered or remarketed under the Prepaid Energy Sales Agreement, including for *Force Majeure* events.

*Replacement of Initially Assigned PPAs.* In the event of any expiration, termination or anticipated termination of the Initial Assigned Rights and Obligations, the Project Participant is required to use Commercially Reasonable Efforts to assign replacement Assigned Rights and Obligations to MSCG for delivery of Assigned Energy equal to the Prepaid Quantities ("*Replacement Assigned Rights and Obligations*"). **Assigned Rights and Obligations are expected to be in place for the entirety of the Initial Reset Period, and Base Energy is not expected to be delivered during the Initial Reset Period.**

*Energy Remarketing.* In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, CCCFA will be deemed to have requested that the Energy Supplier remarket the portion of the Assigned Quantities not delivered, and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable index price (or the applicable fixed price with respect to Assigned Energy otherwise intended to be delivered to EBCE during the Initial EPS Energy Period). Any such remarketing will be treated as a purchase by the Energy Supplier for its own account and will constitute a private-business use sale, and the Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

In the event of any expiration or termination of an Assigned PPA, the Project Participant is required to use Commercially Reasonable Efforts to enter into a new limited assignment agreement relating to one or more additional PPAs, providing for the assignment of its rights to delivery of quantities of EPS Compliant Energy equivalent to the Prepaid Quantities for the term of such assignment. To the extent the Project Participant exercises Commercially Reasonable Efforts to enter into such a limited assignment but is unable to do so, then, subject to certain conditions, MSES shall be obligated remarket Base Energy and purchase such Base Energy for its own account at the applicable index price, and the Project Participant shall be obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of energy. Otherwise, to the extent that the Project Participant has not exercised commercially reasonable efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract, MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price. See "THE PREPAID ENERGY SALES AGREEMENT – *Energy Remarketing*" and "THE POWER SUPPLY CONTRACT – *Remarketing of Energy*".

***Base Energy is not expected to be delivered during the Initial Reset Period.***

*Early Termination.* Various termination events are specified in the Prepaid Energy Sales Agreement. Upon the occurrence of certain of these events, the Prepaid Energy Sales Agreement may be terminated by CCCFA or MSES, and upon the occurrence of certain other events including a Failed Remarketing, the Prepaid Energy Sales Agreement will terminate automatically. If the Prepaid Energy Sales Agreement is terminated, MSES will be required to pay a scheduled termination payment (the *"Termination Payment"*) to CCCFA. Any termination of the Prepaid Energy Sales Agreement will result

in extraordinary mandatory redemption of the Bonds. The amount of the Termination Payment declines over time as MSES performs its Energy delivery obligations under the Prepaid Energy Sales Agreement.

*The amount of the Termination Payment, together with the amounts required to be on deposit in certain funds and accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that the Energy Supplier and the Investment Agreement Provider pay and perform their contract obligations when due, or in the event of nonpayment by the Energy Supplier, payment by Morgan Stanley under the Morgan Stanley Guarantees. A payment shortfall from any one of these entities could result in a payment shortfall to Bondholders.*

See "THE PREPAID ENERGY SALES AGREEMENT" and "THE BONDS — *Redemption — Extraordinary Mandatory Redemption*". A schedule of the monthly Termination Payment during the initial Reset Period under the Prepaid Energy Sales Agreement is attached as APPENDIX I.

*The Receivables Purchase Provisions*

The Prepaid Energy Sales Agreement contains provisions (the *"Receivables Purchase Provisions"*) designed to mitigate the risk of non-payment by the Project Participant under the Power Supply Contract. Upon a payment default by the Project Participant, the Receivables Purchase Provisions require CCCFA to put, and require MSES, as Receivables Purchaser, to purchase the amount owed by the defaulting Project Participant (the *"Put Receivables"*) with a face value up to the amount due from the Project Participant for any two consecutive months. Amounts received by the Trustee from the sale of Put Receivables will be deposited into the Revenue Fund and applied in accordance with the priorities established under the Indenture. See "SECURITY FOR THE BONDS—*Flow of Funds*".

See "THE PREPAID ENERGY SALES AGREEMENT—*Receivables Purchase Provisions*".

*The Power Supply Contract*

The Power Supply Contract provides for the sale to the Project Participant of the Prepaid Energy to be delivered to CCCFA over the term of the Prepaid Energy Sales Agreement. Such Prepaid Energy will be comprised of the Assigned Quantities under Assigned PPAs and, to the extent such Assigned Quantities are less than the Prepaid Quantities for any month and MSES is otherwise unable to deliver make-up quantities of EPS Compliant Energy, Base Energy. Under the Power Supply Contract, CCCFA has agreed to deliver, and the Project Participant has agreed to purchase, such Assigned Quantities and to cause the remarketing of any Base Energy during the Delivery Period. Base Energy is required to be remarketed under the Prepaid Energy Sales Agreement, subject to the requirements set forth therein. In the event that the Energy Supplier is unable to remarket any such Base Energy, the Energy Supplier has agreed to purchase such Base Energy for its own account.

**The payments required to be made under the Power Supply Contract, together with any net amounts received by CCCFA under the CCCFA Commodity Swap and Interest Rate Swap described below, constitute the primary and expected source of the Revenues pledged to the payment of the Bonds. The obligations of the Project Participant under the Power Supply Contract are payable solely from revenues of the Project Participant derived from its community choice aggregator power supply operations. Under the Power Supply Contract, the Project Participant makes payments**

**directly to the Trustee for deposit into the Revenue Fund. See "THE POWER SUPPLY CONTRACT".**

*Re-Pricing Agreement*

On the initial issue date of the Bonds, CCCFA and the Energy Supplier will enter into a Re-Pricing Agreement (the *"Re-Pricing Agreement"*), which provides for (a) the determination of Energy Delivery Periods subsequent to the initial Delivery Period to correspond to the related Interest Rate Periods on the Bonds (*"Reset Periods"*) and (b) the determination of the amount of the discount (in US Dollars per MWh) to the Index Price that will be available for such Reset Period (the *"Available Discount"*) for sales to the Project Participant under the Power Supply Contract during each Reset Period.

The Initial Reset Period under the Prepaid Energy Sales Agreement ends one month before the end of the Initial Interest Rate Period, and each subsequent Reset Period will end one month before the end of the corresponding Interest Rate Period. The Initial Reset Period begins on the first day of [_____] 20[__] and ends on the last day of [_____] 20[__]*. See "The RE-PRICING AGREEMENT".

*Interest Rate Swap*

With respect to any Index Rate Bonds that are issued, CCCFA will enter into an interest rate swap agreement (the *"Interest Rate Swap"*) with MSES, as Interest Rate Swap Counterparty, in order to hedge its exposure to interest rate fluctuations on the Index Rate Bonds and match its payment obligations on the Index Rate Bonds with the expected Revenues of the Clean Energy Project. Under the Interest Rate Swap, CCCFA will pay amounts corresponding to the principal amount of the Index Rate Bonds at a fixed interest rate and will receive from MSES amounts corresponding to the principal amount of the Index Rate Bonds at a floating rate equal to the interest rates on the Index Rate Bonds. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period. See "THE INTEREST RATE SWAP".

*Commodity Swaps*

*CCCFA Commodity Swap*. CCCFA has entered into the CCCFA Commodity Swap under which CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for the monthly notional quantities specified in the CCCFA Commodity Swap.

*MSES Commodity Swap*. MSES has entered into the MSES Commodity Swap with the same Commodity Swap Counterparty under which MSES pays a fixed price and the Commodity Swap Counterparty pays a floating price. The notional energy quantities under the MSES Commodity Swap match those under the CCCFA Commodity Swap and, accordingly, those under the Prepaid Energy Sales Agreement.

*Term*. The Commodity Swaps extend for the term of the delivery period under the Prepaid Energy Sales Agreement, but are subject to early termination upon the occurrence of certain events. Termination of either of the Commodity Swaps without replacement by CCCFA and MSES will give rise to early termination rights under, and in some cases result in automatic termination of, the Prepaid Energy Sales

* Preliminary; subject to change.

Agreement, which would result in the extraordinary mandatory redemption of the Bonds pursuant to the Indenture.

*Commodity Swap Counterparty*. The swap counterparty is [_____]. For a description of certain provisions of the Commodity Swaps, see "THE COMMODITY SWAPS." For information regarding the Commodity Swap Counterparty, see "THE COMMODITY SWAP COUNTERPARTY."

*Custodial Agreements.* CCCFA will enter into a Custodial Agreement (the *"CCCFA Custodial Agreement"*), with the Commodity Swap Counterparty and the Custodian to administer payments under the CCCFA Commodity Swap. MSES will enter into a separate Custodial Agreement (the *"MSES Custodial Agreement,"* and together with the MSES Custodial Agreement, the *"Custodial Agreements"*), with the Commodity Swap Counterparty and the Custodian, to administer payments under MSES Commodity Swap. The Custodial Agreements contain provisions designed to mitigate risks to CCCFA and Bondholders resulting from a failure of the Commodity Swap Counterparty to make payments to CCCFA under the CCCFA Commodity Swap, and mitigate risks to MSES resulting from a failure of the Commodity Swap Counterparty to make payments to MSES under the MSES Commodity Swap. See "The Commodity Swaps—Custodial Agreements."

*Morgan Stanley Guarantees*

The payment obligations of MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under a guarantee agreement (the "*Morgan Stanley Guarantee"*). See "THE PREPAID ENERGY SALES AGREEMENT—*Security*" and "THE INTEREST RATE SWAP—*Morgan Stanley Guarantee*". The payment obligations of MSES under the MSES Commodity Swap are unconditionally guaranteed by Morgan Stanley under a separate guarantee agreement (the *"Morgan Stanley Commodity Swap Guarantee"*). See "THE COMMODITY SWAPS—*The MSES Commodity Swap*". The Morgan Stanley Guarantee and the Morgan Stanley Commodity Swap Guarantee are referred to collectively herein as the *"Morgan Stanley Guarantees."*

*The Energy Supplier, MSCG and Morgan Stanley*

The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The Federal Energy Regulatory Commission (the *"FERC"*) has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services at market-based rates. The Energy Supplier is not registered with the Commodity Futures Trading Commission (the *"CFTC"*) in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the MSES Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees.

MSCG is an indirect, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC.

Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides its products and services to a large and diversified group of clients and customers, including

corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the United States, and its principal offices in London, Tokyo, Hong Kong and other world financial centers.

See "THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY" and "THE PREPAID ENERGY SALES AGREEMENT—*Security*".

*Certain Relationships*

MSES, which is the Energy Supplier, the Receivables Purchaser, the counterparty to the MSES Commodity Swap and the Interest Rate Swap provider, and MSCG, which is assignee under the Assignment Agreements are indirect, wholly-owned subsidiaries of Morgan Stanley. The payment obligations of MSES under the Prepaid Energy Sales Agreement, the MSES Commodity Swap and the Interest Rate Swap, are unconditionally guaranteed by Morgan Stanley.

Morgan Stanley & Co. LLC (*"MS&Co."*) is serving as the Underwriter of the Bonds. MS&Co. is a Delaware corporation (incorporated in 1969) and is a wholly-owned subsidiary of Morgan Stanley.

The relationships described above could create one or more conflicts of interest or the appearance of such conflicts.

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This Official Statement includes information regarding and descriptions of CCCFA, the Clean Energy Project, the Energy Supplier, MSCG, Morgan Stanley, the Commodity Swap Counterparty, the Project Participant and the Bonds, and summaries of certain provisions of the Indenture, the Power Supply Contract, the Prepaid Energy Sales Agreement, the Commodity Swaps, the Receivables Purchase Provisions, the Re-Pricing Agreement, the Investment Agreements, the Interest Rate Swap and the Custodial Agreements referred to herein. Such descriptions and summaries do not purport to be complete or definitive, and such summaries are qualified by reference to such documents. Certain of these documents are available to prospective investors during the initial offering period of the Bonds and thereafter to Bondholders, in each case upon request to CCCFA. Descriptions of the Indenture, the Bonds, the Prepaid Energy Sales Agreement, the Power Supply Contract, the Commodity Swaps, the Investment Agreements, the Interest Rate Swap, the Custodial Agreements, the Receivables Purchase Provisions and the Re-Pricing Agreement, and are qualified by reference to bankruptcy laws affecting the remedies for the enforcement of the rights and security provided therein and the effect of the exercise of police and regulatory powers by federal and state authorities.

***This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after the Bonds are converted to another Interest Rate Period.***

## THE CLEAN ENERGY PROJECT

CCCFA is issuing the Bonds to finance the Clean Energy Project, which includes the cost of acquisition of a 30-year supply of EPS Compliant Energy (the "*Prepaid Energy*") under a Prepaid Energy Sales Agreement between CCCFA and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the *"Energy Supplier"* or *"MSES"*) and the sale thereof to the Project Participant as hereinafter described. The term "*EPS Compliant Energy*" means three-phase, 60-cycle alternating current electric energy ("*Energy*") that the Project Participant can contract for and purchase in compliance with 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 the Project Participant.

Pursuant to the Prepaid Energy Sales Agreement, the Energy Supplier is obligated to deliver specified quantities of Prepaid Energy to CCCFA each month (the *"Prepaid Quantities"*), make certain payments for any Prepaid Quantities not delivered, remarket Prepaid Quantities not taken by the Project Participant and make a Termination Payment upon any early termination of the Prepaid Energy Sales Agreement in whole or in part. Any such Termination Payment will be applied to the mandatory redemption of the Bonds in whole or in part, as applicable. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, are unconditionally guaranteed by Morgan Stanley (*"Morgan Stanley"*). For a summary of certain terms and provisions of the Prepaid Energy Sales Agreement, see "THE PREPAID ENERGY SALES AGREEMENT".

CCCFA has entered into a Power Supply Contract (the *"Power Supply Contract"*) for the sale of the Prepaid Energy with the Project Participant. During the Delivery Period, the Project Participant will use the Prepaid Energy it purchases from CCCFA for sale to retail customers located in its established service area. For a summary of certain terms and provisions of the Power Supply Contract, see "THE POWER SUPPLY CONTRACT". See APPENDIX A for certain information with respect to the Project Participant.

*Assignment of Power Purchase Agreements by the Project Participant*

California's EPS regulations, codified as Senate Bill 1368 (2006) ("*SB 1368*") prevents all California utilities, both privately and publicly owned, from signing long-term contracts from a specified source with a greenhouse gas emissions greater per unit of power than the emissions of greenhouse gases for combined-cycle natural gas baseload generation or from an unspecified source. For baseload generation procured under contracts, a long-term commitment is a contract of five years or longer, and the Project Participant has adopted long-term plans for the procurement of EPS Compliant Energy.

*Right to Assign Existing and Future Power Purchase Agreements*. The Clean Energy Project is structured to assist the Project Participant to procure a long-term supply of EPS Compliant Energy at attractive prices. In order to do so, the Clean Energy Project includes a feature whereby the Project Participant will assign to the Energy Supplier, or to Morgan Stanley Capital Group Inc. ("*MSCG*"), a portion of the Project Participant's rights and obligations (the "*Assigned Rights and Obligations*") to receive certain quantities ("*Assigned Quantities*") of EPS Compliant Energy ("*Assigned Energy*"), together with associated Green Attributes (as defined in APPENDIX B hereto), renewable energy credits ("*RECs*"), capacity, or other related products (collectively, *"Assigned Products"*) under existing and future power purchase agreements ("*PPAs*"). With respect to any such assignment to MSCG, MSCG will redeliver such Assigned Energy and

other Assigned Products to the Energy Supplier to meet the Energy Supplier's obligations to deliver Prepaid Energy to CCCFA under the Prepaid Energy Sales Agreement. CCCFA will then deliver such Assigned Energy and other Assigned Products to the Project Participant under its Power Supply Contract. Concurrent with the execution of the Prepaid Energy Sales Agreement and the Power Supply Contract, the Project Participant has entered into a limited assignment agreement (each, an "*Assignment Agreement*") relating to a specific PPA (an *"Initially Assigned PPA"*) among the Project Participant, the Energy Supplier and MSCG, as seller under each Initially Assigned PPA, to assign the Assigned Rights and Obligations (the "*Initial Assigned Rights and Obligations*") to the Energy Supplier beginning [_____ 1, 20__] and through [_____, 20__].

In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations under the Assigned PPAs, the Project Participant is obligated to exercise Commercially Reasonable Efforts to assign Replacement Assigned Rights and Obligations to MSCG for delivery of EPS Compliant Energy to the Energy Supplier. The Project Participant has or expects to have additional power purchase agreements pursuant to which it purchases or expects to purchase EPS Compliant Energy and wherein its rights and obligations thereunder could be assigned to MSCG.

In the event of a termination of the Prepaid Energy Sales Agreement, the rights, title and interest under the Assigned PPAs will revert back to the Project Participant, who may continue to receive the EPS Compliant Energy delivered under such agreements at the price payable under the applicable Assigned PPA. In the event of a termination of an Assignment Agreement and the reversion of the related Assigned Rights and Obligations under an Assigned PPA to the Project Participant, no termination payment other than payment for delivered Assigned Products will be required to be made by CCCFA, the Energy Supplier or MSCG.

*Structure of the Clean Energy Project*

The Prepaid Energy Sales Agreement, the Power Supply Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Energy Supplier, Morgan Stanley, the Investment Agreement Provider and the Project Participant of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are calculated to be sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap. These arrangements include:

- The Energy Supplier is required to deliver Prepaid Energy under the Prepaid Energy Sales Agreement to CCCFA such that CCCFA can meet its obligations to the Project Participant under the Power Supply Contract. In the event Assigned Quantities equivalent to the Prepaid Quantities are not delivered under the Assigned PPAs, and the Energy Supplier is unable to deliver make-up quantities of EPS Compliant Energy, the Energy Supplier is required to deliver equivalent quantities of Base Energy for remarketing. In the event the Energy Supplier fails to deliver Base Energy for any reason, including *force majeure* events, it is required to pay certain specified amounts to CCCFA.

- The Project Participant has agreed to pay for Prepaid Energy tendered for delivery under its Power Supply Contract at the Contract Price. In the event the Project Participant fails

to pay when due any amounts owed under its Power Supply Contract, CCCFA has covenanted in the Indenture to exercise its right under the Power Supply Contract to suspend further deliveries of Prepaid Energy to the Project Participant and to give notice to the Energy Supplier to follow the provisions of the Prepaid Energy Sales Agreement with respect to Prepaid Energy for which delivery has been suspended.

- In the event the Project Participant fails to pay for Prepaid Energy tendered for delivery by CCCFA or fails to pay damages for Prepaid Energy tendered by CCCFA and not taken, the Trustee is obligated to sell and MSES is obligated to purchase Put Receivables.

- In the event of a suspension of Prepaid Energy deliveries to the Project Participant, the Energy Supplier will remarket Base Energy pursuant to the Prepaid Energy Sales Agreement. The Prepaid Energy Sales Agreement requires specified payments for all Base Energy remarketed or purchased, less certain applicable fees.

- If the Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian under the terms of the Energy Supplier Custodial Agreement will pay the amount that the Energy Supplier paid under the corresponding Energy Supplier Commodity Swap (or in the event of termination of such Energy Supplier Commodity Swap, the amount that the Energy Supplier paid into the applicable custodial account as if such Energy Supplier Commodity Swap were still in effect), which such amount is held in custody, to CCCFA, and such payment will be treated as a Commodity Swap Receipt.

- If a Termination Event occurs under the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment to CCCFA, as further described below.

- [_____], as provider of the Debt Service Account Investment Agreement (the *"Investment Agreement Provider"*) is required to make timely payment of scheduled amounts due under the Investment Agreement which, together with other Revenues, provide sufficient monies to CCCFA to pay debt service.

In the event the Energy Supplier fails to perform its material obligations under the Prepaid Energy Sales Agreement, the Prepaid Energy Sales Agreement will terminate automatically in certain circumstances or CCCFA at its option may terminate the Prepaid Energy Sales Agreement in other circumstances. Upon any termination of the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment. The payment of the Termination Payment is guaranteed by Morgan Stanley under the Morgan Stanley Guarantee. In the event the Prepaid Energy Sales Agreement is terminated, the Series 2022A-1 Bonds are to be redeemed at their Amortized Value and the Series 2022A-2 Bonds and Series 2022A-3 Bonds are to be redeemed at 100% of their principal amount (in each case plus accrued interest to the redemption date), regardless of reinvestment rates at the time. See "THE BONDS—*Redemption—Extraordinary Mandatory Redemption.*"

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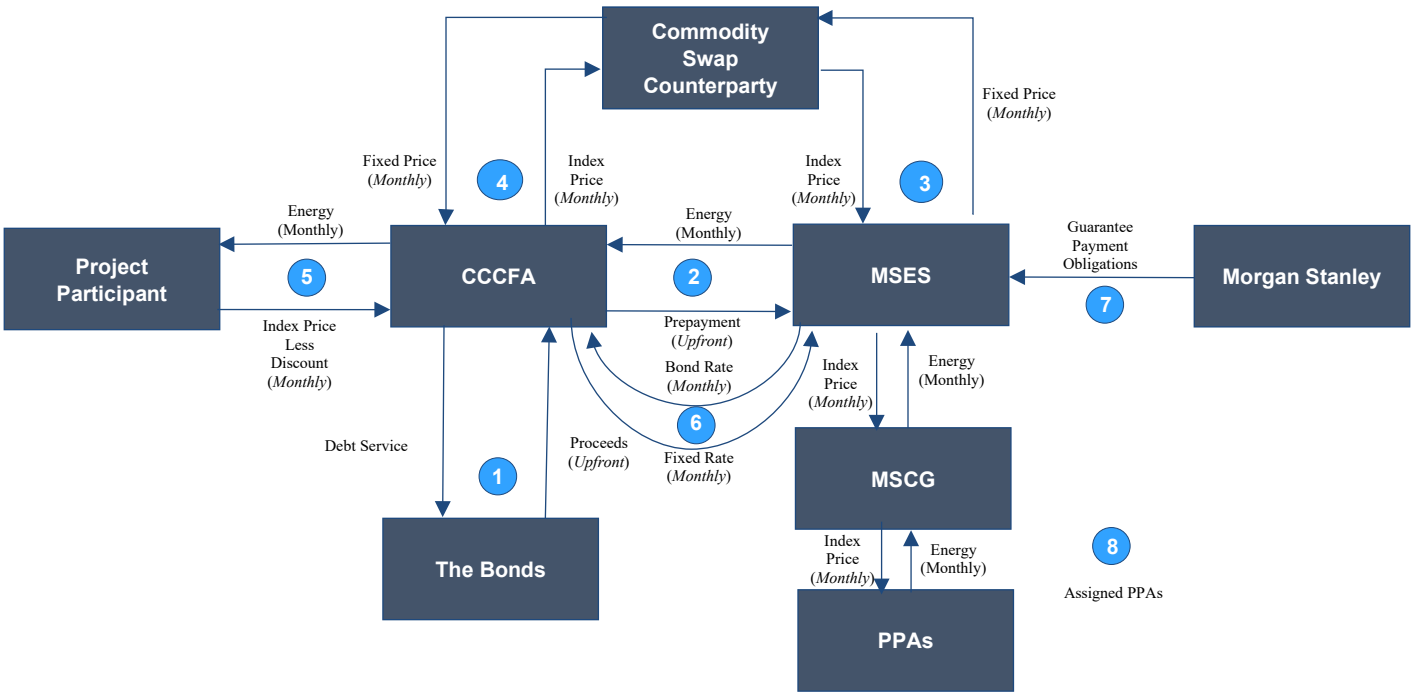
# CLEAN ENERGY PROJECT TRANSACTION STRUCTURE




**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 (or at floating rates swapped to a fixed rate under the Interest Rate Swap) 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 Energy that (i) is remarketed based on the applicable index price, or (ii) is not delivered based on replacement cost or the index price, whichever is higher; and (c) make a termination payment upon any early termination of the Prepaid Energy Sales Agreement, including upon a Failed Remarketing, as described herein.

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. **CCCFA Commodity Swap:** CCCFA enters into a Commodity Swap with the Commodity Swap Counterparty to facilitate its ability to sell specified Energy quantities required to be delivered to the Project Participant at index prices, creating the economic effect of fixing the discount below the index (market) price at which Energy is sold to the Project Participant. CCCFA Commodity Swap enables CCCFA to sell prepaid quantities to the Project Participant at index prices while ensuring that the net revenues from Project Participant payments and CCCFA Commodity Swap always equal or exceed debt service regardless of the index price of Energy at the time. Quantities, term, and delivery points for CCCFA Commodity Swap mirror those of the MSES Commodity Swap.

5. **Project Participant:** Under the Energy Supply Contract, CCCFA will sell to the Project Participant all of the Energy delivered by MSES on a pay-as-you-go basis at an index price less specified discounts determined to ensure that the month's net Energy sale revenues (net of swap payments and receipts) will enable CCCFA to make scheduled deposits to the Debt Service Account.

6. **Interest Rate Swap:** CCCFA will enter into the Interest Rate Swap with MSES under which it will pay a fixed rate and receive a floating rate with respect to the interest rate on the Index Rate Bonds, as described herein.

7. **MS Guarantees:** The payment obligations of MSES under the Prepaid Energy Sales Agreement and the MSES Commodity Swap will be guaranteed by Morgan Stanley.

8. **Assigned PPAs:** The Project Participant is expected to assign its rights to receive EPS Compliant Energy under existing and future PPAs to MSES in order for MSES to meet its obligation to delivery EPS Compliant Energy to CCCFA under the Prepaid Energy Sales Agreement. To the extent a PPA is with MSCG, the Project Participant will assign the PPA to MSES.

The cumulative effect of the Prepaid Energy Sales Agreement, the CCCFA Commodity Swap, the Power Supply Contract and related documents enables CCCFA to receive dependable Energy supplies at a discount below market prices for sale to the Project Participant. The resulting monthly net revenues, regardless of changes in Energy prices, are expected to be adequate to pay Debt Service requirements on the Bonds and program expenses when due.

## DESIGNATION OF BONDS AS GREEN BONDS

*Green Bonds Designation*

Per the International Capital Market Association ("ICMA"), Green Bonds are any type of bond instrument where the proceeds will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects and which are aligned with the four core components of the Green Bond Principles. The four core components are: 1. Use of Proceeds; 2. Process for Project Evaluation and Selection; 3. Management of Proceeds; and 4. Reporting.

Kestrel Verifiers has determined that the Bonds are in conformance with the four core components of the ICMA Green Bond Principles, as described in Kestrel Verifiers' "Second Party Opinion", which is attached hereto as Appendix F.

*Independent Second Party Opinion on Green Bond Designation and Disclaimer*

For over 20 years, Kestrel Verifiers has been consulting in sustainable finance. Kestrel Verifiers, a division of Kestrel 360, Inc. is an Approved Verifier accredited by the Climate Bonds Initiative and an Observer for the ICMA Green Bond Principles and Social Bond Principles. Kestrel Verifiers reviews transactions in all asset classes worldwide for alignment with ICMA Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and the Climate Bonds Initiative Standards and criteria.

The Second Party Opinion issued by Kestrel Verifiers does not and is not intended to make any representation or give any assurance with respect to any other matter relating to the bonds. Designations by Kestrel Verifiers are not a recommendation to any person to purchase, hold, or sell the bonds and such labeling does not address the market price or suitability of these bonds for a particular investor and does not and is not in any way intended to address the likelihood of timely payment of interest or principal when due.

In issuing the Second Party Opinion, Kestrel Verifiers has assumed and relied upon the accuracy and completeness of the information made publicly available by CCCFA, the Project Participant, or that was otherwise made available to Kestrel Verifiers.

## INVESTMENT CONSIDERATIONS

The purchase of the Bonds involves certain investment considerations discussed throughout this Official Statement. Prospective purchasers of the Bonds should make a decision to purchase the Bonds only after reviewing the entire Official Statement and making an independent evaluation of the information contained herein. Certain of those investment considerations are summarized below. This summary does not purport to be complete, and the order in which the following investment considerations are presented is not intended to reflect their relative significance.

*Special and Limited Obligations*

The Bonds are special, limited obligations of CCCFA and are payable solely from and secured solely by the Trust Estate pledged pursuant to the Indenture. The Trust Estate includes only the proceeds, revenues, funds and rights related to the Clean Energy Project, as described under "SECURITY FOR THE

BONDS — The Indenture" below and does not include any other revenues or assets of CCCFA. The Bonds are not general obligations of CCCFA, and CCCFA has no taxing power.

Only CCCFA is obligated to pay the Bonds. The Project Participant is not obligated to make payments in respect of the debt service on the Bonds. The Project Participant is obligated only to purchase and pay for Prepaid Energy tendered for delivery by CCCFA at the Contract Price set forth in the Energy Supply Contract. None of the Energy Supplier, MSCG nor Morgan Stanley is obligated to make debt service payments on the Bonds, and none of them has guaranteed payment of the Bonds.

*Structure of the Clean Energy Project*

The Prepaid Energy Sales Agreement, the Power Supply Contract, the Investment Agreement, the Commodity Swaps, the Interest Rate Swap, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Energy Supplier, Morgan Stanley, the Investment Agreement Provider and the Project Participant of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are calculated to be sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds and the payments due under the Interest Rate Swap and the CCCFA Commodity Swap. See "THE CLEAN ENERGY PROJECT – *Structure of the Clean Energy Project*".

In the event the Energy Supplier fails to perform its material obligations under the Prepaid Energy Sales Agreement, the Prepaid Energy Sales Agreement will terminate automatically in certain circumstances or CCCFA at its option may terminate the Prepaid Energy Sales Agreement in other circumstances. Upon any termination of the Prepaid Energy Sales Agreement, the Energy Supplier is required to pay the scheduled Termination Payment. The payment of the Termination Payment is guaranteed by Morgan Stanley under the Morgan Stanley Guarantee. In the event the Prepaid Energy Sales Agreement is terminated, the Series 2022A-1 Bonds are to be redeemed at their Amortized Value and the Series 2022A-2 Bonds and the Series 2022A-3 Bonds are to be redeemed at 100% of their principal amount (in each case plus accrued interest to the redemption date), regardless of reinvestment rates at the time. See "THE BONDS—*Redemption—Extraordinary Mandatory Redemption."*

*Performance by Others*

During the Initial Interest Rate Period, the ability of CCCFA to pay timely the scheduled debt service on the Bonds depends on the timely performance and payment by (a) MSES under the Prepaid Energy Sales Agreement, including the Receivables Purchase Provisions therein, the MSES Commodity Swap and the Interest Rate Swap, (b) Morgan Stanley under the Morgan Stanley Guarantees, and (c) the Investment Agreement Provider under the Investment Agreement. The failure by any one or more of such parties to meet such obligations could materially and adversely affect the ability of CCCFA to pay timely the scheduled debt service on the Bonds, and to meet its other obligations under the Indenture, the Prepaid Energy Sales Agreement, the Interest Rate Swap, the Power Supply Contract and, if applicable, the CCCFA Commodity Swap.

The events and conditions that could result in either or both of (a) a default in the payment of Debt Service on the Bonds or (b) a Termination Event under the Prepaid Energy Sales Agreement, which will cause the extraordinary mandatory redemption of the Bonds, include items that may be within or outside the control of CCCFA or the Energy Supplier (or both), such as:

- failure by the Energy Supplier in the timely performance of its obligations under the Prepaid Energy Sales Agreement to make payments of replacement cost damages for Prepaid Energy not delivered and for any remarketed Base Energy;

- in the event of nonpayment by the Energy Supplier of its obligations under the Prepaid Energy Sales Agreement, the Receivables Purchase Provisions, the MSES Commodity Swap or the Interest Rate Swap, failure by Morgan Stanley in the timely payment of the guaranteed amounts under the Morgan Stanley Guarantees;

- the prospects and financial and operational performance of the Energy Supplier, MSCG and Morgan Stanley and their continuing ability to meet their respective obligations under the Prepaid Energy Sales Agreement, the MSES Commodity Swap, the Interest Rate Swap and the Morgan Stanley Guarantees, respectively, for their full terms;

- failure by MSES to purchase Put Receivables required to be sold by the Trustee and purchased by MSES pursuant to the Receivables Purchase Provisions in the event that the Project Participant fails to pay for Prepaid Energy tendered for delivery by CCCFA or fails to pay damages for Prepaid Energy tendered by CCCFA and not taken.

- failure by the Energy Supplier in the performance of its remarketing obligations with respect to any Base Energy under the Prepaid Energy Sales Agreement, including particularly its continuing ability to remarket Base Energy to Municipal Utilities;

- failure by the Commodity Swap Counterparty in the timely performance of its obligations under the CCCFA Commodity Swap and the MSES Commodity Swap combined with a failure in the timely performance and enforcement of the Energy Supplier Custodial Agreement;

- failure by the Energy Supplier and CCCFA in the timely performance of their respective obligations under the MSES Commodity Swap and the CCCFA Commodity Swap;

- the inability of the Energy Supplier and CCCFA to replace timely any Commodity Swap that has been terminated;

- failure by MSES or CCCFA in the timely performance of their respective obligations under the Interest Rate Swap; and

- failure by the Investment Agreement Provider to make timely payment of the required amounts due or payable under the Investment Agreement.

Upon early termination of the Prepaid Energy Sales Agreement, the Energy Supplier will be obligated to pay the scheduled Termination Payment. The scheduled amount of the Termination Payment,

together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide CCCFA with an amount at least sufficient to redeem all of the Bonds, assuming that the Energy Supplier and the Investment Agreement Provider pay and perform their contract obligations when due.

In the case of a Failed Remarketing and a mandatory redemption of the Bonds on the Mandatory Purchase Date, the amounts required to be on deposit in certain Funds and Accounts held by the Trustee under the Indenture are calculated to be sufficient to pay the Redemption Price of all Bonds on the Mandatory Purchase Date, assuming that the Energy Supplier and the Investment Agreement Provider pay and perform their respective contract obligations when due, or in the event of nonpayment by the Energy Supplier, payment by Morgan Stanley pursuant to the Morgan Stanley Guarantee. Any failure to pay the purchase price or the Redemption Price of all of the Bonds on the Mandatory Purchase Date will result in an Event of Default under the Indenture.

*Energy Remarketing*

The Energy Supplier must remarket any Base Energy required to be delivered under the Prepaid Energy Sales Agreement. In the event the Energy Supplier is unable to remarket such Base Energy, it has agreed to purchase such Base Energy for its own account. The Energy Supplier is required to (a) enter all remarketing sales or purchases of Base Energy on a ledger system that tracks compliance with the requirements of the U.S. Treasury Regulations applicable to tax-exempt bonds that finance Prepaid Energy supplies, and (b) remediate any non-complying sales (i.e., non-qualifying use sales and private business use sales) through "qualifying use" sales within two years. See "INTRODUCTION – *Energy Remarketing*", "THE PREPAID ENERGY SALES AGREEMENT – *Energy Remarketing*", and "THE POWER SUPPLY CONTRACT – *Remarketing of Energy*".

***Base Energy is not expected to be delivered during the Initial Reset Period***.

*Limitations on Exercise of Remedies*

The remedies available to CCCFA under the Prepaid Energy Sales Agreement are limited to those described herein. The remedies available to the Trustee, CCCFA and the Holders of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory provisions and judicial decisions, the remedies provided in the Indenture may not be readily available or may be limited.

*Enforceability of Contracts*

The enforceability of the various legal agreements relating to the Clean Energy Project may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors or secured parties generally, by the exercise of judicial discretion in accordance with general principles of equity and by principles of equity, public policy and commercial reasonableness. The Prepaid Energy Sales Agreement and other agreements relating to the Clean Energy Project are executory contracts. If CCCFA, the Energy Supplier, Morgan Stanley, the Commodity Swap Counterparty, the Project Participant or any of the parties with which CCCFA has contracted under such agreements (including the Prepaid Energy Sales Agreement) is involved in a bankruptcy proceeding, the relevant agreement could be discharged in return for a claim for damages against the party's estate with uncertain value. In the event

that CCCFA is involved in an insolvency proceeding, the exercise of the remedies afforded to the Trustee under the Indenture may be stayed, and the availability of the Revenues necessary for the payment of the Bonds could be materially and adversely affected.

*No Established Trading Market*

The Bonds constitute a new issue with no established trading market. The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained therein. Although the Underwriter has informed CCCFA that it currently intends to make a market in the Bonds, they are not obligated to do so and may discontinue any such market making at any time without notice. There can be no assurance as to the development or liquidity of any market for the Bonds. If an active public market does not develop, the market price and liquidity of the Bonds may be adversely affected.

*Loss of Tax Exemption on the Bonds*

As described below, the opinion of Bond Counsel with respect to the exclusion of interest on the Bonds from gross income for federal income tax purposes is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (the *"IRS"*) or the courts, and is not a guarantee of a result.

The Indenture, CCCFA's Tax Agreement with respect to the Bonds, the Prepaid Energy Sales Agreement and the Power Supply Contract contain various covenants and agreements on the part of CCCFA, the Energy Supplier and the Project Participant that are intended to establish and maintain the tax-exempt status of the Bonds. CCCFA, the Energy Supplier and the Project Participant have each agreed to abide by the various covenants and agreements designed to protect the tax-exempt status of the Bonds. A failure by CCCFA, the Energy Supplier and the Project Participant to comply with such covenants and agreements could, directly or indirectly, adversely affect the tax-exempt status of the Bonds.

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. It cannot be predicted whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, under current procedures the IRS may treat CCCFA as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market value and liquidity of the Bonds until the audit is concluded, regardless of the ultimate outcome.

Any loss of the tax-exempt status of the Bonds could be retroactive to the date of issuance of the Bonds and could cause all of the interest on the Bonds to be includable in gross income for purposes of federal income taxation. *The loss of the tax-exempt status of the Bonds is not a termination event under the Prepaid Energy Sales Agreement and will not result in a mandatory redemption of the Bonds.* See "THE PREPAID ENERGY SALES AGREEMENT" and "TAX MATTERS".

*Certain Risks of SOFR Index Rate Bonds*

The Series 2022A-3 Bonds will bear interest at the SOFR Index Rate described herein, which is based on the Secured Overnight Financing Rate reported on the website of the Federal Reserve Bank of

New York (the *"SOFR Index"*). See "THE SERIES 2022A-3 BONDS—Interest—Series 2022A-*3 Bonds"* below and APPENDIX J for descriptions of the SOFR Index Rate and related matters.

An investment in the Series 2022A-3 Bonds entails risks not associated with an investment in a fixed rate security or a debt security the interest rate on which is not based on the SOFR Index. Investors should consult their own financial and legal advisors about the risks associated with an investment in the Series 2022A-3 Bonds and the suitability of an investment in the Series 2022A-3 Bonds considering their particular circumstances, and possible scenarios for economic, interest rate and other factors that may affect their investment.

Because the SOFR Index is independently published by the Federal Reserve Bank of New York (the "*NY Federal Reserve*") based on data received from other sources, CCCFA and the Calculation Agent have no control over its determination, calculation, or publication. There can be no guarantee that the SOFR Index will not be discontinued or fundamentally altered in a manner that is materially adverse to the interests of investors in the Series 2022A-3 Bonds. A change in the manner in which the SOFR Index is calculated may result in a reduction of the amount of interest payable on the Series 2022A-3 Bonds and/or the trading prices of the Series 2022A-3 Bonds. If the rate at which interest on the Series 2022A-3 Bonds accrues on any day declines to zero or becomes negative, no interest will be payable on the Series 2022A-3 Bonds in respect of that day.

The NY Federal Reserve began to publish the SOFR Index in April 2018 and has also published historical indicative data for the SOFR Index going back to August 2014. Investors should not rely on any historical changes or trends in the SOFR Index as an indicator of future changes in the SOFR Index. Also, since the SOFR Index is a relatively new market index, the Series 2022A-3 Bonds may have a limited trading market when issued, and an established trading market may never develop or may be illiquid. Market terms of debt securities indexed to the SOFR Index, such as the spread over the index reflected in the interest rate provisions, may evolve over time, and trading prices of the Series 2022A-3 Bonds may be lower than those of later-issued indexed debt securities as a result. Similarly, if the SOFR Index does not prove to be widely used in securities similar to the Series 2022A-3 Bonds, the trading prices of the Series 2022A-3 Bonds may be lower than those of bonds linked to indices that are more widely used. Investors in the Series 2022A-3 Bonds may not be able to sell the Series 2022A-3 Bonds at all or may not be able to sell the Series 2022A-3 Bonds at prices that will provide them with a yield comparable to similar investments that have a developed secondary market, and may consequently suffer from increased pricing volatility and market risk.

## SECURITY FOR THE BONDS

*The Indenture*

The Bonds are secured under the Indenture solely by a pledge of and lien on the *"Trust Estate,"* which is defined in the Indenture to include (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Power Supply Contract, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment (e) all right, title and interest of CCCFA in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and

interest of CCCFA in, to and under the Morgan Stanley Guarantee, (g) all right, title and interest of CCCFA in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of CCCFA in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

The pledge of and lien on the Trust Estate in favor of the Bonds is subject to (x) the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, including the first charge on the Revenues to pay Operating Expenses of the Project, and (y) a prior pledge of and lien on the Commodity Swap Payment Fund and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparty.

The term *"Revenues"* is defined in the Indenture to include (a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by CCCFA from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by CCCFA under the Power Supply Contract and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale and/or transmission of Energy or otherwise with respect to the Clean Energy Project, (b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund; and (c) any Commodity Swap Receipts received by the Trustee on behalf of CCCFA; *provided that,* the term "Revenues" shall not include: (i) any Termination Payment pursuant to the Prepaid Energy Sales Agreement; (ii) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund pursuant to the Indenture; (iii) any amounts paid by the Project Participant under the Prepaid Clean Energy Project Administration Agreement; (iv) any Assignment Payment received from the Energy Supplier; (v) Interest Rate Swap Receipts (which are to be deposited directly into the Debt Service Account) and (vi) amounts paid by the Project Participant in respect of the Project Administration Fee. The Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Project. See "*Flow of Funds*" below.

The term *"Operating Expenses"* is defined in the Indenture to mean, to the extent properly allocable to the Clean Energy Project: (a) CCCFA's expenses for operation of the Clean Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Prepaid Energy Sales Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of CCCFA's obligations under the Power Supply Contract; (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of the Indenture (other than Debt Service on the Bonds and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of CCCFA's obligations under the Power Supply Contract; (c) fees payable by CCCFA with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other

professional fees and expenses incurred by CCCFA, and all other reasonable administrative and operating expenses of CCCFA which are incurred by CCCFA with respect to the Bonds, the Indenture, or the Clean Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by CCCFA with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by CCCFA, including, without limitation, directors and officers liability insurance allocable to the Clean Energy Project; provided that, for purposes of the transfers from the Revenue Fund described in this section under the heading "*Flow of Funds*", Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. Commodity Swap Payments, litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS, THE PROJECT PARTICIPANT, THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER.

THE OBLIGATION OF THE PROJECT PARTICIPANT TO MAKE PAYMENTS TO CCCFA UNDER THE POWER SUPPLY CONTRACT IS NOT, NOR SHALL IT BE CONSTRUED AS, A GUARANTY OR ENDORSEMENT OF OR A SURETY FOR, THE BONDS. SUCH OBLIGATION OF THE PROJECT PARTICIPANT IS NOT A GENERAL OBLIGATION OF THE PROJECT PARTICIPANT AND IS PAYABLE SOLELY FROM THE REVENUES DERIVED FROM SALES OF ENERGY TO THEIR CUSTOMERS. THE INDENTURE DOES NOT MORTGAGE THE CLEAN ENERGY PROJECT OR ANY TANGIBLE PROPERTIES OR ASSETS OF CCCFA OR THE PROJECT PARTICIPANT.

See APPENDIX B for definitions of certain terms and see APPENDIX C for a further description of certain provisions of the Indenture.

*Flow of Funds*

All Revenues are required by the Indenture to be deposited promptly by the Trustee upon receipt thereof into the Revenue Fund. In each Month during which there is a deposit of Revenues into the Revenue Fund (but in no case later than the respective dates set forth below), the Trustee is required to apply the amounts on deposit in the Revenue Fund, to the extent available, for credit or deposit to the Funds and Accounts indicated below, in the amounts described below (such application to be made in such a manner so as to assure good funds are available on the respective dates set forth below) in the following order of priority:

*first*, to the Operating Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount, if any, required so that the balance therein shall equal the amount necessary for the payment of Operating Expenses coming due for such Month;

*second*, subject to the provisos below, to the Debt Service Fund, not later than the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day) for the credit to the Debt Service Account, an amount equal to the greater of (A) the Scheduled Debt Service Deposit, as set forth in the Indenture, or (B) the amount necessary to cause an amount equal to the

cumulative unpaid Scheduled Debt Service Deposits due through such date to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

*third,* to the Commodity Swap Payment Fund, on or before the twenty-fifth day of such Month (or, if such day is not a Business Day, the next succeeding Business Day), the amount required so that the balance therein shall equal the Commodity Swap Payments due for such Month; and

*fourth*, to the Energy Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Put Receivables and the payment of interest on all Put Receivables sold to the Energy Supplier pursuant to the Receivables Purchase Provisions;

*provided, however,* that if the Project Participant's payment failure results in a Net Participant Shortfall Amount for such Month, the intent is that such payment failure be allocated between the amounts that otherwise would have been deposited to the Debt Service Fund and the Commodity Swap Payment Fund. Therefore, for any Month in which a Net Participant Shortfall Amount exists, the Trustee shall reduce the amount transferred under *second* above to the extent necessary such that the amount available for transfer under *third* above is not less than (a) the amount that would be required to fully fund the Commodity Swap Payments due for such Month, minus (b) the sum of all Net Participant Shortfall Amounts for such Month; and *provided further,* the amount required to be transferred to the Debt Service Account under *second* above shall be reduced by the amount of investment earnings scheduled to be deposited into the Debt Service Account on or before the last Business Day of such Month.

If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified in the Indenture, the Trustee shall immediately notify CCCFA of such deficiency and the Trustee shall (a) if CCCFA has not previously done so, cause CCCFA to suspend all deliveries of all quantities of Energy under a Power Supply Contract to any Project Participant that is in default thereunder, and (b) promptly give notice to the Energy Supplier to follow the remarketing provisions set forth in the Prepaid Energy Sales Agreement.

In each Month during which (a) there is a deposit of Revenues into the Revenue Fund and (b) payment of a Principal Installment is due, after making such transfers, credits and deposits as described in the first paragraph of this section "Flow of Funds," and after the applicable Principal Installment payment date, the Trustee shall credit to the General Reserve Fund the remaining balance in the Revenue Fund. See "*Revenues and Revenue Fund*" and "*Payments into Certain Funds*" in APPENDIX C.

As noted above, certain amounts are pledged as a part of the Trust Estate but do not constitute Revenues and are not deposited into the Revenue Fund, including (a) any Termination Payment received under the Prepaid Energy Sales Agreement, which is to be deposited directly into the Redemption Account, and (b) any Interest Rate Swap Receipts, which are to be deposited into the Debt Service Account, all as provided in the Indenture.

*Debt Service Fund - Debt Service Account*

The amounts deposited into the Debt Service Account, including the Capitalized Interest Subaccount therein, must be held in such Account and applied to the payment of Debt Service and Interest Rate Swap Payments payable on each Bond Payment Date. Amounts on deposit in the Debt Service Account, including the Capitalized Interest Subaccount therein, will be invested pursuant to the Debt Service Account Investment Agreement, which will provide for scheduled withdrawals to pay debt service

on the Bonds when due and, in the case of extraordinary redemption, to pay the Redemption Price without penalty or market value adjustments.

The Capitalized Interest Subaccount of the Debt Service Account will be funded with a deposit of Bond proceeds on the Initial Issue Date of the Bonds. The amount so deposited will be used to pay the interest coming due on the Bonds and the Interest Rate Swap through [_____] 1, 20[__]*.

*Administrative Fee Fund*

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

*Commodity Swap Payment Fund*

The amounts credited to the Commodity Swap Payment Fund shall be applied from time to time by the Trustee solely to the payment of Commodity Swap Payments when due.

Any amount remaining in the Commodity Swap Payment Fund following the payment of the Commodity Swap Payment due in any Month and prior to any deposit therein for the following Month shall be transferred to the Revenue Fund for application as described above.

*Debt Service Fund - Redemption Account*

In the event of an early termination of the Prepaid Energy Sales Agreement, CCCFA will direct the Energy Supplier to pay the Termination Payment directly to the Trustee for the account of CCCFA into the Redemption Account. Amounts deposited into the Redemption Account shall be applied by the Trustee to the extraordinary mandatory redemption of Outstanding Bonds as described below under "THE BONDS — Redemption — *Extraordinary Mandatory Redemption*."

*Restriction on Additional Obligations*

Other than the Bonds and any refunding bonds, no additional bonds or other obligations are authorized to be issued under the Indenture or for which payment is otherwise secured by a pledge or assignment of, or lien on, the Trust Estate.

*Amendment of Indenture*

CCCFA and the Trustee may, subject to the conditions and restrictions in the Indenture, enter into a Supplemental Indenture or Indentures without the consent of the Bondholders for certain purposes, and upon receipt of a Rating Confirmation if the Bonds affected by such change are rated by a Rating Agency.

* Preliminary; subject to change.

See *"Supplemental Indenture Not Requiring Consent of Bondholders," "General Provisions"* and *"Powers of Amendment"* in Appendix C hereto.

*Investment of Funds*

*General*. Subject to the provisions of the Indenture, amounts on deposit in the Funds and Accounts may be invested in, among other things, guaranteed investment contracts, forward delivery agreements, interest rate exchange agreements or similar agreements providing for a specified rate of return over a specified time period; provided, however, that guaranteed investment contracts, forward delivery agreements or similar agreements must be with providers that are rated (or whose financial obligations to the Issuer receive credit support from an entity rated) at least at the same credit rating level as the Energy Supplier (or if the Energy Supplier is not rated, the credit rating level of its guarantor). See Appendix B—Definitions of Certain Terms and "*Investment of Certain Funds*" in Appendix C.

*Debt Service Account Investment Agreement.* On the Initial Issue Date of the Bonds, it is expected that CCCFA or the Trustee will enter into an investment agreement (which may be in the form of an ISDA Master Agreement) with respect to the Debt Service Account, including the Capitalized Interest Subaccount therein (the *"Debt Service Account Investment Agreement"*). The Debt Service Account Investment Agreement constitutes a "Debt Service Fund Agreement" as defined in the Indenture. The Debt Service Account Investment Agreement will have a term coterminous with the Initial Interest Rate Period and is required to meet all of the criteria of a Qualified Investment under the Indenture and is expected to be bid out on the day of Bond pricing to qualified investment providers. See "SECURITY FOR THE BONDS—*Investment of Funds*".

Required qualifications for the initial Investment Agreement Provider include: (a) a minimum credit rating requirement for the Investment Agreement Provider (or its guarantor) of at least that of Morgan Stanley, which as of the date of this Official Statement is "A1" by Moody's, and (b) a requirement that upon a credit rating withdrawal, suspension or downgrade of the Investment Agreement Provider (or its guarantor) below the lower of (i) "A1" by Moody's or (ii) the then-current credit rating of Morgan Stanley, the Investment Agreement Provider will provide a credit remedy, such as providing credit support or posting eligible collateral, or CCCFA will have the right to terminate the agreement.

Required qualifications for a Debt Service Account Investment Agreement that is a forward delivery agreement include: (a) the minimum credit rating requirement described in the clause (a) of the preceding paragraph, (b) the credit downgrade provisions described in clause (b) of the preceding paragraph, (c) opinions of counsel, domestic and foreign, where applicable, that the securities delivered in connection with the agreement do not constitute property of the forward delivery agreement provider under bankruptcy, and will not be subject to automatic stay, and (d) a limitation that the only securities the forward delivery agreement provider is allowed to deliver are non-callable, non-prepayable (i) direct obligations of the United States government or any of its agencies that are unconditionally guaranteed as to principal and interest by the United States of America, or (ii) senior debt obligations of any agency of the United States government.

The Debt Service Account Investment Agreement will provide for a fixed interest rate to be paid on the funds invested and will provide for scheduled withdrawals in connection with certain Bond Payment Dates.

Upon transaction termination, whether by extraordinary mandatory redemption or final maturity, the funds invested under the Debt Service Account Investment Agreement will be used to pay the redemption price or debt service due on the Bonds. If the Debt Service Account Investment Agreement terminates, all invested funds are required to be returned to the Trustee.

*Enforcement of Project Agreements*

*Power Supply Contract*. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Power Supply Contract, as well as any other contract or contracts entered into relating to the Clean Energy Project, and duly perform its covenants and agreements thereunder.

CCCFA has also covenanted to exercise promptly its right to suspend all Energy deliveries under a Power Supply Contract if the Project Participant thereunder fails to pay when due any amounts owed to CCCFA thereunder and to promptly give notice to the Energy Supplier to follow provisions set forth in the Prepaid Energy Sales Agreement for each Month of such suspension with respect to the quantities of Energy for which deliveries have been suspended.

In the event that the Project Participant delivers a Remarketing Election Notice (as defined in each Power Supply Contract) in respect of any Reset Period, CCCFA will promptly give notice to the Energy Supplier to follow the provisions set forth in the Remarketing Exhibit to the Prepaid Energy Sales Agreement for each month of such Reset Period with respect to any quantities of Energy that would otherwise have been delivered to such Project Participant. See "THE RE-PRICING AGREEMENT".

CCCFA has further covenanted that it will not consent or agree to or permit any termination or rescission of, any assignment or novation (in whole or in part) by the Project Participant of, or amendment to or otherwise take any action under or in connection with any Power Supply Contract that will impair the ability of CCCFA to collect Revenues in each Fiscal Year which, together with the other amounts available therefor, shall provide an amount sufficient to pay the amounts set forth in the Indenture. Under the Indenture, upon the satisfaction of certain conditions, including delivery of a Rating Confirmation from each rating agency then rating the Bonds, CCCFA may agree to the amendment of a Power Supply Contract or to the assignment of a Power Supply Contract by the Project Participant to another Municipal Utility.

*Enforcement of Agreements by the Trustee*. Under the Indenture, CCCFA has irrevocably pledged and collaterally assigned to the Trustee its rights to issue notices and to take any other actions that CCCFA is required or permitted to take in order to enforce performance under certain documents, including (a) the Prepaid Energy Sales Agreement, (b) the Receivables Purchase Provisions, (c) the Power Supply Contract, (d) the CCCFA Commodity Swap, (e) the Interest Rate Swap , and (f) the Morgan Stanley Guarantee. CCCFA has retained, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights for which it has pledged and collaterally assigned to the Trustee as described in the preceding sentence; *provided, however*, if an Event of Default has occurred and is continuing, the Trustee will have the right to notify CCCFA to cease exercising such rights, subject to certain rights of the Energy Supplier with respect to the Power Supply Contract.

*Prepaid Energy Sales Agreement*. CCCFA has covenanted in the Indenture that it will enforce the provisions of the Prepaid Energy Sales Agreement and that it will duly perform its covenants and agreements thereunder.

The Trustee will promptly notify CCCFA of any payment default that has occurred and is continuing on the part of the Energy Supplier under the Prepaid Energy Sales Agreement. CCCFA will provide the Trustee with Written Notice of the Early Termination Payment Date (a) on the date on which a Failed Remarketing occurs, and (b) in all other cases, not more than five Business Days after such date is determined.

CCCFA has further covenanted that it will not consent or agree to or permit any rescission of, assignment of or amendment to or otherwise take any action under or in connection with the Prepaid Energy Sales Agreement which would in any manner materially impair or materially adversely affect its rights thereunder or the rights or security of the Bondholders under the Indenture; *provided*, that the Prepaid Energy Sales Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation with respect to such assignment or amendment.

*CCCFA Commodity Swap*. Amounts due to CCCFA under the CCCFA Commodity Swap are payable directly to the Trustee. Pursuant to the Indenture, Commodity Swap Receipts are to be deposited by the Trustee into the Revenue Fund. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the CCCFA Commodity Swap and duly perform its covenants and agreements thereunder,

- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the CCCFA Commodity Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and

- it will not exercise any right to terminate the CCCFA Commodity Swap unless either (i) it has entered into a replacement CCCFA Commodity Swap that meets the requirements of the Indenture (described below) or (ii) CCCFA causes or permits the termination of the Prepaid Energy Sales Agreement prior to or as of such early termination date.

CCCFA may replace the CCCFA Commodity Swap (and any related guaranty of the Commodity Swap Counterparty's obligations thereunder) with a similar agreement for the same hedging purposes with an alternate Commodity Swap Counterparty at any time upon delivery to the Trustee of a Rating Confirmation. If the CCCFA Commodity Swap is subject to termination by either party in accordance with its terms, then (A) CCCFA may terminate the CCCFA Commodity Swap if CCCFA has the right to do so, and (B) CCCFA may enter into a replacement CCCFA Commodity Swap with an alternate Commodity Swap Counterparty without a Rating Confirmation, but only if the replacement CCCFA Commodity Swap is identical in all material respects to the existing CCCFA Commodity Swap, except for the identity of the Commodity Swap Counterparty, and (1) the replacement Commodity Swap Counterparty is then rated at least the lower of (a) the credit rating of the Energy Suppler or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) the rating then assigned by each Rating Agency to the Bonds or (2) the Commodity Swap Counterparty provides such collateral and security arrangements as CCCFA determines to be necessary, and (3) in either case, the Commodity Swap Counterparty enters into a replacement Custodial Agreement with the Energy Supplier and the Custodian that is identical in all material respects to the existing Custodial Agreement.

In the event that the CCCFA Commodity Swap is terminated by CCCFA and is not replaced (a) within the 120-day replacement period provided for in the Prepaid Energy Sales Agreement or (b) after six consecutive monthly payments have been received by CCCFA from the Custodian (instead of directly from the Commodity Swap Counterparty), CCCFA has covenanted in the Indenture that it will exercise its right to terminate the Prepaid Energy Sales Agreement in accordance with its terms. Further, CCCFA has covenanted under the Indenture to terminate the CCCFA Commodity Swap (a) after 120 days if it is not receiving payments owed to it thereunder, or (b) after six consecutive monthly payments by the Custodian if CCCFA is receiving payments from the Custodian instead of directly from the Commodity Swap Counterparty, in order to replace both the CCCFA Commodity Swap and the MSES Commodity Swap.

*Interest Rate Swap*. Amounts due to CCCFA under the Interest Rate Swap are payable directly to the Trustee. Pursuant to the Indenture, Interest Rate Swap Receipts are to be deposited by the Trustee in the Debt Service Account. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder,

- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and

- it will not exercise any right to terminate the Interest Rate Swap unless it either (i) has entered into a replacement Interest Rate Swap that meets requirements specified in the Indenture or (ii) in all other cases, the Prepaid Energy Sales Agreement will terminate prior to or as of such early termination date.

CCCFA may enter into a replacement Interest Rate Swap at any time by delivering a Rating Confirmation to the Trustee. If the Interest Rate Swap is subject to termination by either party in accordance with its terms, then (A) CCCFA may terminate the Interest Rate Swap if CCCFA has the right to do so, and (B) CCCFA may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without a Rating Confirmation, but only if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap, except for the identity of the Interest Rate Swap Counterparty, and (1) the alternate Interest Rate Swap Counterparty (or its credit support provider under the Interest Rate Swap) is then rated at least the lower of (a) the credit rating of the Energy Supplier, or if the Energy Supplier is not rated, the guarantor of the Energy Supplier or (b) at least as highly as the rating then assigned by each Rating Agency to the Bonds, or (2) the Interest Rate Swap Counterparty provides such collateral and security arrangements as CCCFA shall determine to be necessary.

## SOURCES AND USES OF FUNDS

The sources and uses of funds in connection with the issuance of the Bonds are approximately as follows:

| | |
|---|---|
| SOURCES: | |
| Par Amount | $ |
| Original Issue Premium | |

| | |
|---|---|
| Total Sources | $ |
| USES: | |
| Deposit to Project Fund[1] | $ |
| Costs of Issuance[2] | |
| Total Uses | $ |

1 Includes the prepayment amount and capitalized interest on the Bonds (which will be transferred to the Debt Service Account).

2 Includes underwriting, rating agency, Trustee, financial advisor, legal and other fees and other expenses related to the issuance of the Bonds and the acquisition of the Clean Energy Project.

## THE BONDS

*General*

The Bonds will mature (subject to redemption as described below) on the dates and in the principal amounts shown on the inside cover page of this Official Statement. The Bonds will be initially issued in denominations of $5,000 and any integral multiples thereof (an *"Authorized Denomination"*). The Bonds will be initially issued in book-entry only form through the facilities of The Depository Trust Company, New York, New York (*"DTC"*). See "THE BONDS — *Book-Entry System*" and APPENDIX G for a description of DTC and its book-entry system.

*Interest*

During the Initial Interest Rate Period, the Bonds will bear interest as described below.

***Series 2022A-1 Bonds***

During the Initial Interest Rate Period, the Series 2022A-1 Bonds will bear interest in a Term Rate Period, with the Series 2022A-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 2022A-1 Bonds will be payable semiannually on [_____] 1 and [_____] 1 of each year, commencing [_____] 1, 20[__]*. During the Initial Interest Rate Period, interest on the Series 2022A-1 Bonds will be computed on the basis of a 360-day year of twelve 30-day months.

***Series 2022A-2 Bonds***

The Initial Interest Rate Period for the Series 2022A-2 Bonds will be a SIFMA Index Rate Period, and the Series 2022A-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 2022A-2 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [_____] 20[__]*, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

*Determination of the SIFMA Index Rate.* One Business Day prior to the Initial Issue Date of the Series 2022A-2 Bonds, the SIFMA Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, (A) the SIFMA Index Rate shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day, the Business Day immediately succeeding such Wednesday, and (B) the SIFMA Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. All percentages resulting from any step in the calculation of interest on the Series 2022A-2 Bonds while in the SIFMA 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 thousands of a percentage point rounded upward, and all dollar amounts used in or resulting from such calculation of interest on the Series 2022A-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 then in effect plus (ii) the Applicable Spread.

*Applicable Spread.* The Applicable Spread for the Series 2022 EBCE-2 Bonds is the margin added to the SIFMA Index as shown on the inside cover page of this Official Statement for the Series 2022A-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 Refinitiy which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by CCCFA in compliance with the Indenture.

*Index Rate Reset Date.* The Index Rate Reset Date for the SIFMA Index Rate applicable to the Series 2022A-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.

***Series 2022A-3 Bonds***

The Initial Interest Rate Period for the Series 2022A-3 Bonds will be a SOFR Index Rate Period, and the Series 2022A-3 Bonds will bear interest at the SOFR Index Rate determined as described below during the SOFR Index Rate Period.

*Interest Payments.* Interest on each Series 2022A-3 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [_____] 20[__]*, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

*Determination of the SOFR Index Rate.* One Business Day prior to the Initial Issue Date of the Series 2022A-3 Bonds, the SOFR Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, (a) the SOFR Index shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each SOFR Publish Date and (b) the Calculation Agent shall determine and provide to the Trustee the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date. All percentages resulting from any step in the calculation of interest on the Series 2022A-3 Bonds while in the SOFR 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 the Series 2022 EBCE-3 Bonds will be rounded to the nearest cent (with one-half cent being rounded upward).

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

*Applicable Factor.* The Applicable Factor is the percentage of the SOFR Index shown on the inside cover page of this Official Statement for the Series 2022A-3 Bonds. The Applicable Factor will remain constant for the duration of the SOFR Index Rate Period.

*Applicable Spread.* The Applicable Spread for the Series 2022A-3 Bonds is the margin added to the product of the SOFR Index and the Applicable Factor shown on the inside cover page of this Official Statement. The Applicable Spread will remain constant for the duration of the SOFR Index Rate Period.

*Business Day.* For purposes of determining the SOFR Index Rate, *"Business Day"* means any day other than (a) Saturday or Sunday, (b) or a day on which commercial banks in New York, New York, or the cities in which are located the designated corporate trust offices of the Trustee, the Custodian or a Calculation Agent or the operational office of CCCFA are authorized by law or executive order to close, (c) a day on which the New York Stock Exchange, Inc. is closed, (d) a day on which the payment system of the Federal Reserve System is not operational, or (e) any day that the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the purposes of trading United States government securities.

*Index Rate Reset Date.* The Index Rate Reset Date for the Series 2022A-3 Bonds is each SOFR Effective Date.

*NY Federal Reserve's Website* is the website of the NY Federal Reserve currently at http://www.newyorkfed.org, or any successor website of the NY Federal Reserve.

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

*SOFR Effective Date.* The SOFR Effective Date is each Business Day.

*SOFR Effective Period.* The SOFR Effective Period is the number of actual days from a SOFR Effective Date to the next SOFR Effective Date.

*SOFR Index.* The SOFR Index is the "Secured Overnight Financing Rate" reported on the NY Federal Reserve's Website, or reported by any successor to the NY Federal Reserve as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing the SOFR Index as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date. For example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, [February 17, 2022], the Calculation Agent uses SOFR published on the SOFR Publish Date of Wednesday, [February 16, 2022], which is the SOFR Index for the SOFR Lookback Date of Monday, [February 14, 2022]. SOFR is published every Business Day at 8:00 a.m. and may be revised until 2:30 p.m., as described herein. If the SOFR Index is not available as of any Index Rate Reset

Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date designated by CCCFA in writing (with notice to, and which is available to, the Calculation Agent) in compliance with the Indenture.

*SOFR Interest Calculation Date*. The SOFR Interest Calculation Date is the last Business Day of each month.

*SOFR Lookback Date*. The SOFR Lookback Date is the third Business Day immediately preceding each SOFR Effective Date.

*SOFR Publish Date*. The SOFR Publish Date is the second Business Day immediately preceding each SOFR Effective Date.

*Additional Information Regarding SOFR.* The Secured Overnight Financing Rate (or SOFR) is published by the NY Federal Reserve and is intended to be a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities. The NY Federal Reserve reports that the Secured Overnight Financing Rate includes all trades in the Broad General Collateral Rate (as defined on the NY Federal Reserve's Website), plus bilateral Treasury repurchase agreement transactions cleared through the delivery-versus-payment service offered by the Fixed Income Clearing Corporation (the *"FICC"*), a subsidiary of the Depository Trust and Clearing Corporation (*"DTCC"*). The Secured Overnight Financing Rate is filtered by the NY Federal Reserve to remove a portion of the foregoing transactions considered to be "specials" (as defined on the NY Federal Reserve's Website).

The NY Federal Reserve reports that the Secured Overnight Financing Rate is calculated as a volume- weighted median of transaction-level tri-party repo data collected from The Bank of New York Mellon as well as General Collateral Finance repurchase agreement transaction data and data on bilateral Treasury repurchase transactions cleared through the FICC's delivery-versus-payment service. The NY Federal Reserve notes that it obtains information from DTCC Solutions LLC, an affiliate of DTCC. The NY Federal Reserve notes on its publication page for the Secured Overnight Financing Rate that use of the Secured Overnight Financing Rate is subject to important limitations and disclaimers, including that the Federal Reserve may alter the methods of calculation, publication schedule, rate revision practices or availability of the Secured Overnight Financing Rate at any time without notice. Secured Overnight Financing Rate rates are subject to revision until 2:30 p.m. on any date on which the Secured Overnight Financing Rate is published. The description of the Secured Overnight Financing Rate herein is not and does not purport to be exhaustive.

For a more complete description of the Secured Overnight Financing Rate, see the NY Federal Reserve's Website at https://apps.newyorkfed.org/markets/autorates/sofr. Such website is not incorporated by reference herein.

For background information with respect to the SOFR Index and illustrative examples of the SOFR Effective Period and the accrual and calculation of interest at the SOFR Index Rate, see APPENDIX J — "Additional Information Regarding SOFR Index Rate Bonds."

For a summary of certain risks relating to SOFR Index Rate Bonds, see "Certain Risks of SOFR Index Rate Bonds" below.

### *Calculation Agent*

The Bank of New York Mellon Trust Company, N.A. will be appointed by CCCFA as Calculation Agent for any Series 2022A-2 Bonds and any Series 2022A-3 Bonds that are issued pursuant to the Indenture and a Calculation Agent Agreement between the parties.

### *General*

After the Initial Interest Rate Period, the Outstanding Bonds may be remarketed into another Term Rate Period or Index Rate Period(s), as applicable, or may be remarketed or converted to one or more of a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period or an Index Rate Period(s). ***This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after the Bonds have been converted to another Interest Rate Period***.

Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date, shall be paid to the Person in whose name that Bond is registered, with respect to the Series 2022A-1 Bonds, at the close of business on the 15th day of the Month immediately preceding the Month in which such Interest Payment Date falls, or, with respect to the Series 2022A-2 Bonds and Series 2022A-3 Bonds, the Business Day immediately preceding such Interest Payment Date (the *"Regular Record Date"*).

Any interest on any Bond which is payable, but is not punctually paid or duly provided, for on any Interest Payment Date (*"Defaulted Interest"*), shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by CCCFA to the Persons in whose names the Bonds are registered at the close of business on a date (the *"Special Record Date"*) for the payment of such Defaulted Interest, which shall be fixed in the following manner: CCCFA shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time CCCFA shall deposit with the Paying Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to and approved in writing by the Paying Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in the Indenture. Thereupon the Bond Registrar will then fix a Special Record Date for the payment of such Defaulted Interest which will be not more than 15 days or less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the written notice of the proposed payment. The Bond Registrar shall promptly notify CCCFA of such Special Record Date and, in the name and at the expense of CCCFA, will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

*Tender*

*Mandatory Tender.* The Bonds of each Series maturing on [_____] 1, 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 Issuer Purchase Account established by the Indenture. Accrued interest due on the Bonds on the Mandatory Purchase Date, which is an Interest Payment Date, shall be paid from amounts in the Debt Service Account.

The Purchase Price of each Bond on the Mandatory Purchase Date shall be payable only upon surrender of such Bond to the Trustee at its designated corporate trust office, accompanied by an instrument of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner's duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time, on the date specified for such delivery in a notice provided to the Owners by the Trustee, such notice to be given no less than 15 days prior to the applicable Mandatory Purchase Date. In the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on the Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and no interest shall accrue thereon on and after the Mandatory Purchase Date, and the Owner thereof shall have no rights under this Indenture other than to receive payment of the Purchase Price thereof.

*Failed Remarketing.* Under the Indenture, a *"Failed Remarketing"* means, (a) with respect to the Bonds on any Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (ii) redeem such Bonds in whole on such date, or (b) with respect to the Bonds (i) if, on the last day of the current Reset Period prior to a Mandatory Purchase Date, CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by 12:00 noon, New York City time, on the fifth Business Day preceding such Mandatory Purchase Date. A Failed Remarketing will result in early termination of the Prepaid Energy Sales Agreement and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. In the case of a Failed Remarketing, an extraordinary mandatory redemption of the Bonds will have the same economic effect on Bondholders as a mandatory tender of the Bonds on the Mandatory Purchase Date.

*No Optional Tender.* The Bonds of each Series are ***not*** subject to optional tender by Bondholders during the Initial Interest Rate Period.

*Redemption**

*Optional Redemption of Series 2022A-1 Bonds*. The Series 2022A-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

* Preliminary; subject to change.

* Preliminary; subject to change.

specified by CCCFA and by lot within a maturity) on any date prior to [_____] 1, 20[__] 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 2022A-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 2022A-1 Bond or the Initial Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax-Exempt Municipal Bond Rate (described below) for such Series 2022A-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 2022A-1 Bonds maturing on or after the Initial Mandatory Purchase Date are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and by lot within a maturity) on any date on or after [_____] 1, 20[__] at a Redemption Price, calculated by a quotation agent selected by CCCFA, equal to the Amortized Value thereof as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2022A-1 Bonds to be redeemed), as follows:

| REDEMPTION PERIOD (DATES INCLUSIVE) | REDEMPTION PRICE | |
|---|---|---|
| | 20[__] MATURITY | 20[__] MATURITY |
| [__]/1/20[__] to [__]/1/20[__] | | |
| [__]/1/20[__] to [__]/1/20[__] | | |
| [__]/1/20[__] to [__]/1/20[__] | | |

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

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

The *"Applicable Tax-Exempt Municipal Bond Rate"* means, for the Bonds of any maturity, the "Comparable AAA General Obligations*"* yield curve rate for the year of such maturity or Mandatory Purchase Date, as applicable, as published by Refinity at least one Business Day and not more than fifteen Business Days prior to the date that notice of redemption is required to be given pursuant to the Indenture. If no such yield curve rate is established for the applicable year, the "Comparable AAA General Obligations*"* yield curve rate for the two published maturities most closely corresponding to the applicable year shall be determined, and the Applicable Tax-Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curve rates on a straight-line basis. This rate is made available daily by Refinity and is available to its subscribers through the internet address: www.tm3.com. In calculating the Applicable Tax-Exempt Municipal Bond Rate, should Refinity no longer publish the "Comparable AAA

General Obligations" yield curve rate, then the Applicable Tax-Exempt Municipal Bond Rate shall equal the Consensus Scale yield curve rate for the applicable year. The Consensus Scale yield curve rate is made available daily by Municipal Market Analytics and is available to its subscribers through its internet address: www.mma-research.com. In the further event Municipal Market Advisors no longer publishes the Consensus Scale, the Applicable Tax-Exempt Municipal Bond Rate shall be determined by a major market maker in municipal securities, as the quotation agent, based upon the rate per annum equal to the annual yield to maturity, calculated using semi-annual compounding, of those tax-exempt general obligation bonds rated in the highest Rating Category by Moody's and S&P with a maturity date equal to the stated maturity date or Mandatory Purchase Date, as applicable, of such Bonds having characteristics (other than the ratings) most comparable to those of such Bonds in the judgment of the quotation agent. The quotation agent's determination of the Applicable Tax-Exempt Municipal Bond Rate shall be final and binding on all parties in the absence of manifest error and may be conclusively relied upon in good faith by the Trustee.

*"Amortized Value"* means, with respect to Series 2022A-1 Bond to be redeemed during the Initial Interest Rate Period, the principal amount of such Series 2022A-1 Bond multiplied by the price of such Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices (as such industry standard prevailed on the date such Series 2022A-1 Bond began to bear interest at its current Term Rate), with a delivery date equal to the date of redemption of such Series 2022A-1 Bond, a maturity date equal to the earlier of (a) the stated maturity date of such Bond or (b) the Term Rate Tender Date and a yield equal to such Series 2022A-1 Bond's original reoffering yield on the date such Series 2022A-1 Bond began to bear interest at its current Term Rate (as set forth on the inside cover page of this Official Statement) which, in the case of the initial Term Rate Period for the Series 2022A-1 Bonds and certain dates, produces the amounts for all of the Series 2022A-1 Bonds set forth in the Indenture, *provided that* in the case of an optional redemption of the Series 2022A-1 Bonds on or after [_____] 1, 20[__], the Amortized Value shall be determined as of the first day of the month of redemption (expressed as a percentage of the principal amount of the Series 2022A-1 Bonds to be redeemed). The Amortized Value of the Bonds as of certain dates during the Initial Interest Rate Period is shown on Appendix H.

*Optional Redemption of Index Rate Bonds.* The Series 2022A-2 Bonds and Series 2022A-3 Bonds are subject to optional redemption by CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and at random within a maturity), on any day on or after the first day of the third month preceding the Initial Mandatory Purchase Date for the Series 2022A-2 Bonds and Series 2022A-3 Bonds, as applicable, at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption. In lieu of redeeming the Series 2022A-2 Bonds or Series 2022A-3 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of CCCFA, use such funds as may be available by CCCFA or as are otherwise available under the Indenture to purchase such Series 2022A-2 Bonds or Series 2022A-3 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022A-2 Bonds or Series 2022A-3 Bonds, as applicable. Any Series 2022A-2 Bonds and Series 2022A-3 Bonds so purchased may be remarketed in a new Interest Rate Period.

*Extraordinary Mandatory Redemption*. The Bonds shall be subject to mandatory redemption prior to maturity in whole, and not in part, on the first day of the Month following the Early Termination Payment Date, which redemption date in the case of a Failed Remarketing will be the same day as the current Mandatory Purchase Date, at the following Redemption Prices: (a) in the case of the Series 2022A-1 Bonds,

the Amortized Value thereof, and (b) in the case of the Series 2022A-2 Bonds and Series 2022A-3 Bonds, 100% of the principal amount thereof, plus, in each case, accrued and unpaid interest to the redemption date. See Appendix H for a schedule showing the Redemption Price (excluding accrued interest) of all of the Bonds upon an extraordinary mandatory redemption following an Early Termination Payment Date that occurs during the Initial Interest Rate Period.

CCCFA shall provide the Trustee with Written Notice of the Early Termination Payment Date (x) on the fifth business day preceding a Mandatory Purchase Date if an amount equal to the Purchase Price of the Bonds that are subject to such Mandatory Purchase Date has not been deposited with the Trustee and (y) in all other cases, not more than five days after such date is determined.

*Notice of Redemption*. In the case of every redemption of Bonds, the Trustee must give notice, in the name of CCCFA, of the redemption of such Bonds by first-class mail, postage prepaid, to the registered owner of each Bond being redeemed, at its address as it appears on the bond registration books of the Trustee or at such address as such owner may have filed with the Trustee in writing for that purpose, as of the Regular Record Date, not less than 15 days prior to the redemption date in the case of an extraordinary mandatory redemption described above, not less than 30 days prior to the redemption date in the case of mandatory sinking fund redemption or optional redemption of the Series 2022A-1 Bonds, and not less than 15 days prior to the redemption date in the case of mandatory sinking fund redemption or optional redemption of the Series 2022A-2 Bonds and Series 2022A-3 Bonds.

Each notice of redemption must identify the Bonds to be redeemed and must state (i) the redemption date, (ii) the Redemption Price or the manner in which it will be calculated, (iii) that the Bonds called for redemption must be surrendered to collect the Redemption Price, (iv) the address at which the Bonds must be surrendered, and (v) that interest on the Bonds called for redemption ceases to accrue on the redemption date. Failure of the registered owner of any Bonds which are to be redeemed to receive any such notice, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any Bonds.

In the event that the Bonds may be subject to extraordinary redemption as a result of a Failed Remarketing that could occur if the Trustee has not received the Purchase Price of the Bonds by noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds may be a conditional notice of redemption, delivered in each case not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee's failure to receive, by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to a mandatory tender on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date and the Bonds shall be purchased pursuant to the provisions of the Indenture relating to mandatory tender on such Mandatory Purchase Date rather than redeemed.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds will be deemed to have been paid under the Indenture, such notice must state that such redemption will be conditioned upon the receipt by the Trustee on or prior to the date fixed for such

redemption of money sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such money shall not have been so received said notice will be of no force and effect, and CCCFA will not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption will not be made and the Trustee must within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

*Effect of Redemption.* On any redemption date, the Redemption Price of each Bond to be redeemed will become due and payable, and from and after such date, notice having been given and moneys available solely for such redemption being on deposit with the Trustee in accordance with the provisions of the Indenture governing redemption of such Bonds, then, notwithstanding that any Bonds called for redemption may not have been surrendered, no further interest will accrue on any of such Bonds. From and after such date of redemption (such notice having been given and moneys available solely for such redemption being on deposit with the Trustee), the Bonds to be redeemed will not be deemed to be Outstanding under the Indenture.

*Partial Redemption of Bonds.* If less than all of the Bonds of a like series, tenor and maturity are called for redemption, the particular Bonds or portions of Bonds of such series, tenor and maturity to be redeemed must be selected by lot in such manner as the Trustee shall determine, in its sole discretion, from Bonds of such series, tenor and maturity not previously called for redemption; *provided*, *however*, that the portion of any Bond of a denomination of more than a minimum Authorized Denomination to be redeemed shall be in the principal amount of such minimum Authorized Denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of a minimum Authorized Denomination which is obtained by dividing by such minimum Authorized Denomination the principal amount of such Bond to be redeemed in part.

*Book-Entry System*

The Bonds will be initially issued in book-entry only form through the facilities of DTC. The Bonds will be transferable and exchangeable as set forth in the Indenture and, when issued, will be registered in the name of Cede & Co., as nominee of DTC. DTC will act as securities depository for the Bonds. So long as Cede & Co. is the registered owner of the Bonds, principal of and premium, if any, and interest on the Bonds are payable by wire transfer by the Trustee to Cede & Co., as nominee for DTC, which, in turn, will remit such amounts to DTC participants for subsequent disbursement to the Beneficial Owners. See APPENDIX G — "BOOK-ENTRY SYSTEM".

## DEBT SERVICE REQUIREMENTS

Set forth in the following table are the Debt Service requirements on the Bonds, giving effect to the fixed interest rates payable by CCCFA under the Interest Rate Swap, in each bond year during the Initial Interest Rate Period, excluding the purchase price of the Bonds that mature on [_____] 1, 20[__] that is payable on the Mandatory Purchase Date ([_____] 1, 20[__]*)[1].

* Preliminary; subject to change.

| YEAR ENDING [_____] 1 | PRINCIPAL AMOUNT | INTEREST | TOTAL |
|---|---|---|---|
| TOTAL | | | |

[1.] As of the Mandatory Purchase Date, $_____ principal amount of the Bonds will remain outstanding and the Bonds outstanding are required to be purchased pursuant to mandatory tender.

## THE PREPAID ENERGY SALES AGREEMENT

*Purchase and Sale*

Under the Prepaid Energy Sales Agreement, the Energy Supplier agrees to deliver EPS Compliant Energy in the monthly quantities set forth in the Prepaid Energy Sales Agreement (the *"Prepaid Energy"*) during the Delivery Period and CCCFA has agreed to make a lump sum advance payment to the Energy Supplier for all of the cost of the Prepaid Energy to be delivered during the Delivery Period. The total quantity of expected Prepaid Energy to be delivered by the Energy Supplier during the initial Delivery Period is approximately [___] million MWh and is subject to change as described below under the heading "*Aggregate Quantity*".

For discussion of the Contract Price, see "THE POWER SUPPLY CONTRACT — *Pricing Provisions*".

*Delivery of Prepaid Energy*

*Assigned Energy*. Assigned Energy delivered under the Prepaid Energy Sales Agreement shall be Scheduled for delivery to and receipt at the delivery point specified in the applicable Assignment Agreement (an "*Assigned Delivery Point*"). Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Agreement. At the start of the Delivery Period, the Project Participant will assign the Initially Assigned 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 Participant under the Power Supply Contract. The aggregate average monthly quantity of Prepaid Energy to be delivered under the Prepaid Energy Sales Agreement during the Initial Reset Period is approximately [_____] MWh. The average monthly quantity of electricity is preliminary and subject to adjustment at the time of the sale of the Bonds, based upon the amount of proceeds received by CCCFA.

*Assignment of Power Purchase Agreements*

The Project Participant has assigned its Initial Assigned Rights and Obligations to the Energy Supplier. The Assigned Energy during the Initial EPS Energy Periods will be delivered from a portfolio of carbon free resources that includes large hydroelectric facilities located in Washington State and Idaho as well as generation from wind farms located in Washington State and Montana. The Initially Assigned PPAs allow for MSCG to add additional carbon free resources, upon written notice to the Project Participant in order to meet the guaranteed minimum delivery obligations thereunder.

*Failure to Deliver or Receive Energy*

*Assigned Quantities.* Neither CCCFA nor the Energy Supplier shall have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Quantities, except as described under the following subheading "— *Energy Remarketing*."

*Base Energy.* Because CCCFA will have prepaid for all Energy to be delivered under the Prepaid Energy Sales Agreement, the Energy Supplier will be required to pay CCCFA for all Base Energy that the Energy Supplier fails to deliver or CCCFA fails to receive for any reason, including events of *force majeure*. The amount the Energy Supplier is required to pay is equal to the quantity that was not delivered or received multiplied by a price that is determined in a manner depending upon the reason for such failure:

- If the Energy Supplier fails to deliver Base Energy for reasons other than *force majeure* or action or inaction by CCCFA, such quantity is referred to herein as a "*Shortfall Quantity*," and the Energy Supplier is required to pay the higher of (a) the replacement price paid by CCCFA, or (b) the Day-Ahead Market Price applicable to the Hour and the Delivery Point for which the Shortfall Quantity arose, plus in either case an administrative fee of $0.50/MWh. In such event, CCCFA will cause the Project Participant to exercise Commercially Reasonable Efforts to mitigate damages paid by the Energy Supplier under the Prepaid Energy Sales Agreement.

- If CCCFA fails to receive all or any portion of Base Energy for reasons other than *force majeure,* for which CCCFA has previously issued a Remarketing Notice in accordance with the Prepaid Energy Sales Agreement, CCCFA shall be deemed to have issued a Deemed Remarketing Notice with respect to such portion.

- If either the Energy Supplier fails to deliver all or any portion of Base Energy or CCCFA fails to receive all or any portion of Base Energy due to events of *force majeure*, the Energy Supplier is required to pay the applicable Contract Index Price for such portion of Base Energy.

The "Contract Index Price" is the day-ahead market price for the delivery point specified in the Prepaid Energy Sales Agreement. See "THE POWER SUPPLY CONTRACT — *Pricing Provisions*". **Base Energy is not expected to be delivered during the Initial Reset Period.**

*Energy Remarketing*

In the event Assigned Quantities equivalent to the Prepaid Quantities for any month are not delivered under an Assigned PPA, CCCFA will be deemed to have requested for the Energy Supplier to remarket the portion of the Assigned Quantities not delivered and the Energy Supplier will be obligated to make a payment to CCCFA equal to the quantity of Assigned Energy not delivered multiplied by the applicable index price (or the applicable fixed price with respect to Assigned Energy otherwise intended to be delivered to EBCE during the Initial EPS Energy Period). Any such remarketing will be treated as a purchase by the Energy Supplier for its own account and will constitute a private-business use sale, and the Project Participant is obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of Energy. To the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

In the event of any expiration or termination of an Assigned PPA, the Project Participant is required to use Commercially Reasonable Efforts to enter into a new limited assignment agreement relating to one or more additional PPAs, providing for the assignment of its rights to delivery of quantities of EPS Compliant Energy equivalent to the Prepaid Quantities for the term of such assignment. If (i) the Project Participant exercises Commercially Reasonable Efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract and (ii) the Project Participant is not in default under its Power Supply Contract, then:

- MSES shall be obligated remarket Base Energy and purchase such Base Energy for its own account at the applicable index price;
- the Project Participant shall be obligated to use Commercially Reasonable Efforts to remediate the proceeds of such sales with other qualifying purchases of energy; and
- to the extent the Project Participant has not remediated the proceeds of such sales within twelve months, MSES is required to use Commercially Reasonable Efforts to remediate such proceeds through Qualifying Sales to Municipal Utilities.

To the extent that the Project Participant (i) has not exercised commercially reasonable efforts to enter into a limited assignment agreement for the redelivery of EPS Compliant Energy under its Power Supply Contract, (ii) is in default under its Power Supply Contract or (iii) has experienced a loss of Energy load such that it has insufficient demand for Prepaid Quantities, then:

- MSES is required to use Commercially Reasonable Efforts to remarket equivalent quantities of Base Energy to Municipal Utilities for a Qualifying Use at a net price not less than the Contract Price; and
- to the extent MSES cannot remarket such quantities to Municipal Utilities for a Qualifying Use, it is required to purchase such quantities for its own account.

*Remarketing Non-Default Termination Event*

MSES is required to use Commercially Reasonable Efforts to remarket Base Energy first in Qualifying Sales and next in non-private business sales. If MSES is unable to remarket Base Energy required to be remarketed under the Prepaid Energy Sales Agreement in Qualifying Sales or in non-private business sales, it will purchase such Base Energy for its own account.

If after two years there are remaining remarketing proceeds from sales to purchasers other than Municipal Utilities or other qualified users, such balance will count against either a limit equivalent to a quantity of Energy, in MWh, equal to $15 million divided by a fixed price per MWh under the Prepaid Energy Sales Agreement (or such higher amount determined by Bond Counsel) or a limit of 10% of the original quantity of Energy purchased under the Prepaid Energy Sales Agreement (or such higher amount determined by Bond Counsel), depending on the status of the purchaser at the time the proceeds are received by CCCFA. Both limits apply in the aggregate over the term of the Prepaid Energy Sales Agreement. Once either limit has been exceeded, a Remarketing Non-Default Termination Event will be deemed to have occurred and the Prepaid Energy Sales Agreement will terminate automatically on the 90th day after such event unless CCCFA and MSES (a) (i) agree to reduce the daily quantity of energy purchased each month, (ii) take the actions necessary to remediate the necessary amount of the Bonds pursuant to their optional redemption provisions, and (iii) deliver to the Trustee amendments to the Prepaid Energy Sales Agreement, Power Supply Contract and Commodity Swaps reflecting the corresponding reduction in Energy quantities, as well as revisions to certain schedules of the Indenture, an accountant's verification, a Favorable Opinion of Bond Counsel and a Rating Confirmation, or (b) Bond Counsel otherwise provides an opinion that such event has not affected the tax-exempt status of the interest on the Bonds. The limits described above are mandated by certain tax requirements and are subject to increase based on revised tax requirements as well as any bond remediations undertaken by CCCFA outside of a termination of the Prepaid Energy Sales Agreement.

*Payment Provisions*

The prepayment from CCCFA to MSES will be due prior to the inception of the term of the Prepaid Energy Sales Agreement. To the extent any other amount becomes due to MSES or CCCFA thereunder (for example, as a result of remarketing or failure to deliver by MSES), such amount will be due to the other party on or before the 25th or 22nd day, respectively, of the month following the month in which such amount accrues.

*Force Majeure*

Each of CCCFA and MSES are excused from their respective obligations to receive and deliver Energy under the Prepaid Energy Sales Agreement to the extent prevented by force majeure, defined generally as any cause not within the reasonable control of the party claiming an excuse to its obligations and to include any declaration of force majeure by a PPA Seller. Excuses to performance include such events as natural disasters, curtailment of electricity transmission, government actions, and strikes. MSES is required to pay to CCCFA the Day Ahead Index Price (or the Assigned Fixed Price during the Initial EPS Energy Period) with respect to any Prepaid Quantities not delivered due to force majeure.

*Assignment*

Neither party may assign its rights under the Prepaid Energy Sales Agreement without the other party's consent except:

(a) pursuant to the Indenture, CCCFA may transfer, sell, pledge, encumber or assign the Prepaid Energy Sales Agreement to the Trustee in connection with a financing arrangement; *provided* that CCCFA may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, CCCFA also assigns the CCCFA Commodity Swap and CCCFA Custodial Agreement to the same assignee; and

(b) MSES may assign the Prepaid Energy Sales Agreement to an affiliate of MSES; *provided* that (i) the Morgan Stanley Guarantee continues to apply to the obligations of such assignee or (ii) the assignee provides CCCFA with a parent guarantee and a Rating Confirmation, which assignment constitutes a novation; and *provided* that MSES may not assign its rights under the Prepaid Energy Sales Agreement unless, contemporaneously with the effectiveness of such assignment, MSES also assigns the MSES Commodity Swap and the MSES Custodial Agreement to the same assignee.

CCCFA has certain rights to cause MSES to novate the Prepaid Energy Sales Agreement as of the commencement of a new Reset Period. Upon any such novation, neither MSES nor Morgan Stanley will have any obligations (contingent or otherwise) or be required to make any payment under any of the transaction documents described above, the Morgan Stanley Guarantee or otherwise, other than obligations that would have existed or payments that would have been required (or guaranteed) had the Prepaid Energy Sales Agreement terminated as of the end of the last Reset Period that commenced prior to such novation (the *"Assignment Payment"*).

*Termination*

CCCFA will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

- MSES's failure to pay when due any amounts owed to CCCFA pursuant to the Prepaid Energy Sales Agreement within two Business Days after receiving notice of a late payment, unless Morgan Stanley has made such payment under the Morgan Stanley Guarantee;
- MSES's insolvency or bankruptcy;
- any representation or warranty made by MSES in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made;
- any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results or would result in the performance of any obligation of MSES to deliver energy or CCCFA to receive energy under the Prepaid Energy Sales Agreement being prohibited or unlawful; or

- the Interest Rate Swap is terminated by CCCFA.

MSES will have the right to terminate the Prepaid Energy Sales Agreement prior to the expiration of the term under the following circumstances:

- CCCFA's failure to pay when due any amounts owed to MSES within five Business Days after receiving notice of a late payment;
- CCCFA's insolvency or bankruptcy;
- any representation or warranty made by CCCFA in the Prepaid Energy Sales Agreement is proven to have been incorrect in any material respect when it was made;
- any interpretation, enactment or change or amendment to any governmental approval or law occurring after the effective date of the Prepaid Energy Sales Agreement that results or would result in the performance of any obligation of MSES to deliver energy or CCCFA to receive energy under the Prepaid Energy Sales Agreement being prohibited or unlawful;
- if the Project Participant makes a Remarketing Election for a Reset Period; or
- if the Power Supply Contract has been terminated or is otherwise no longer in effect.

The Prepaid Energy Sales Agreement will automatically terminate prior to the expiration of the term under the following circumstances:

- the failure to replace, within 120 days, either the CCCFA Commodity Swap or the MSES Commodity Swap if the CCCFA Commodity Swap is terminated for any reason or termination occurs automatically under the CCCFA Commodity Swap as a result of an event of default or a termination event thereunder;
- the failure to replace, within 120 days, the MSES Commodity Swap or the CCCFA Commodity Swap if the MSES Commodity Swap is terminated for any reason or termination occurs automatically under the MSES Commodity Swap as a result of an event of default or a termination event thereunder;
- designation by MSES of an early termination date under the Interest Rate Swap;
- a Failed Remarketing has occurred;
- both (a) Morgan Stanley has delivered a termination notice of the Morgan Stanley Guarantee, and (b) no novation of the Prepaid Energy Sales Agreement has been effected (as described under THE PREPAID ENERGY SALES AGREEMENT—*Assignment*" above) prior to the end of the Initial Reset Period or the then-current Reset Period during which such termination notice was delivered, in which case the Prepaid Energy Sales Agreement will terminate as of the end of the Initial Reset Period or the then-current Reset Period, as applicable;

- the Morgan Stanley Guarantee ceases to be in full force or effect or is declared to be null and void or Morgan Stanley contests the validity or enforceability of the Morgan Stanley Guarantee; *provided* that, for avoidance of doubt, no such event will occur as a consequence of Morgan Stanley becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding; or

- the occurrence of a Remarketing Non-Default Termination Event (as described under "THE PREPAID ENERGY SALES AGREEMENT—*Remarketing Non-Default Termination Event*" above) and either (a) CCCFA and MSES fail to take the remedial actions required by the Prepaid Energy Sales Agreement or (b) CCCFA has not received an Opinion of Bond Counsel to the effect that such event has not affected the tax-exempt status of the Bonds, in either case within 90 days after the Remarketing Non-Default Termination Event has occurred.

*Termination Payment*

If the Prepaid Energy Sales Agreement is terminated before the expiration of its stated term for any reason, MSES will be required to pay a scheduled Termination Payment to CCCFA. The Termination Payment schedule is generally based on the unamortized portion of the prepayment proceeds that were received by MSES. The amount of the Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that MSES and [_____], as Investment Agreement Provider, pay and perform their respective contract obligations when due. See APPENDIX I for a schedule showing the Termination Payment due by month during the Initial Interest Rate Period.

*Security*

MSES's payment obligations under the Prepaid Energy Sales Agreement are unconditionally guaranteed by Morgan Stanley under the Morgan Stanley Guarantee.

The Morgan Stanley Guarantee will expire or terminate, as applicable, on the earliest of (i) the last day of the Delivery Period under the Prepaid Energy Sales Agreement, (ii) the earlier termination of the Prepaid Energy Sales Agreement, and (iii) the last day of the Initial Reset Period or any Reset Period if Morgan Stanley delivers a termination notice to CCCFA, *provided that* the Morgan Stanley Guarantee will continue in full force and effect with respect to MSES's accrued payment obligations under the Prepaid Energy Sales Agreement. An election by Morgan Stanley to terminate the Morgan Stanley Guarantee (without a novation of the Prepaid Energy Sales Agreement and certain other contracts as described under "THE PREPAID ENERGY SALES AGREEMENT—*Assignment*") is an automatic termination event under the Prepaid Energy Sales Agreement as of the end of the Initial Reset Period or the then-current Reset Period and will result in the extraordinary mandatory redemption of the Bonds as described under "THE BONDS—Redemption—*Extraordinary Mandatory Redemption*."

*Receivables Purchase Provisions*

*General.* Pursuant to the Receivables Purchase Provisions of the Prepaid Energy Sales Agreement, MSES has agreed to purchase from CCCFA the rights to payment of net amounts owed by the Project

Participant under the Power Supply Contract (the *"Put Receivables"*). CCCFA is required to sell and MSES is required to purchase Put Receivables under the circumstances described below under *"Put Receivables."*

*Put Receivables.* Upon a payment default by any Project Participant under its Power Supply Contract, CCCFA shall put to MSES and MSES shall purchase Put Receivables with a face value equal to the amount of the non-payment by such Project Participant. CCCFA shall exercise its put option by delivering notice (the *"Put Option Notice"*) to MSES on the 21st day of the Month (or, if the 21st is not a Business Day, then on the next Business Day of the Month) in which the relevant payment default occurs. The Put Option Notice shall include a description of the Put Receivables (including the relevant Project Participant, aging information and face amount of the Put Receivables) to be sold to MSES (collectively, the *"Put Identified Receivables"*).

## THE INTEREST RATE SWAP

*General*

With respect to any Index Rate Bonds that are issued, CCCFA will enter into the Interest Rate Swap in order to hedge its exposure to interest rate fluctuations on such Index Rate Bonds and more closely match its payment obligations on such Index Rate Bonds with its expected Revenues from payments under the Power Supply Contract and the CCCFA Commodity Swap. The Interest Rate Swap consists of a 2002 ISDA Master Agreement, a schedule thereto and a confirmation. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period.

*Payments Under the Interest Rate Swap*

Under the Interest Rate Swap, MSES, as Interest Rate Swap Counterparty, is obligated to pay CCCFA on the Business Day preceding each Interest Payment Date floating amounts equal to the amount of interest due on the Index Rate Bonds on such Interest Payment Date, and CCCFA is obligated to pay the Interest Rate Swap Counterparty fixed amounts calculated using a fixed rate and notional amounts equal to the principal amount of Index Rate Bonds then Outstanding.

Interest Rate Swap Receipts received by CCCFA are deposited directly into the Debt Service Account. Interest Rate Swap Payments owed by CCCFA are payable from amounts on deposit in the Debt Service Account. Neither party will be obligated to make any payment (other than accrued and unpaid amounts) under the Interest Rate Swap upon early termination thereof.

*Events of Default and Termination Events under the Interest Rate Swap*

The Interest Rate Swap contains standard Events of Default and Termination Events set forth in the form of the 2002 ISDA Master Agreement (Multicurrency-Cross Border) published by the International Swap Dealers Association, Inc. (available at www.isda.org), subject to such modifications contained in the Schedule to such ISDA Master Agreement as are generally applied to municipal counterparties.

The Schedule to the ISDA Master Agreement provides that certain of such Events of Default and Termination Events will not apply or provides for a modification to the remedies available upon the occurrence of such an event. The Events of Default not applicable to CCCFA are Section 5(a)(ii)(2) (Repudiation of Agreement), Section 5(a)(iii) (Credit Support Default), Section 5(a)(v) (Default under

Specified Transaction) and Section 5(a)(vi) (Cross Default), and the Termination Event not applicable to CCCFA is Section 5(b)(ii) (Force Majeure Event). Section 5(a)(ii)(2), Section 5(a)(iii), Section 5(a)(v), Section 5(a)(vi) and Section 5(b)(ii) are also not applicable to the Interest Rate Swap Counterparty. Neither CCCFA nor the Interest Rate Swap Counterparty is required to pay any termination payment or other similar amount upon an early termination of the Interest Rate Swap.

The Interest Rate Swap also contains Additional Termination Events that will occur (a) upon any amendment, supplement or modification to the Indenture that materially adversely affects the priority of or security for the Interest Rate Swap Counterparty's obligation to make payments hereunder and (b) automatically upon the occurrence of an early termination of the Prepaid Energy Sales Agreement.

## THE RE-PRICING AGREEMENT

*General*

CCCFA and MSES will enter into the Re-Pricing Agreement which provides for determination of Interest Rate Periods for the Bonds subsequent to the Initial Interest Rate Period and the corresponding Reset Periods. The Initial Reset Period under the Prepaid Energy Sales Agreement and the Power Supply Contract begins on [_____] 1, 20[__] and ends on the last day of [_____] 20[__][*]. The Initial Reset Period under the Prepaid Energy Sales Agreement ends one month before the end of the Initial Interest Rate Period, and each subsequent Reset Period will end one month before the end of the corresponding Interest Rate Period.

The debt service requirements on the Bonds for each Reset Period will not be known until the interest rate on the Bonds has been determined for such Reset Period. The Power Supply Contract includes provisions for the adjustment of the Energy sales price for each Reset Period so as to provide Revenues sufficient to enable CCCFA to meet the debt service requirements on the Bonds during each Reset Period. Accordingly, the Re-Pricing Agreement further provides for the calculation of the amount of the Available Discount (in US Dollars per MWh) for sales of Energy to the Project Participant under the Power Supply Contract during each Reset Period.

In the event that the Available Discount for any Reset Period is less than the Minimum Discount specified in the Power Supply Contract (which includes both monthly discounts and any annual rebates), the Project Participant may elect not to take its contract quantities of Energy during the Reset Period, and to have such Energy remarketed for the duration of the Reset Period (a *"Remarketing Election"*) by giving notice of such election to CCCFA. Any Energy that is covered by a Remarketing Election will be remarketed in accordance with the provisions of the Indenture and the Prepaid Energy Sales Agreement. In the event that the Project Participant makes Remarketing Elections with respect the Energy to be delivered during a Reset Period, MSES will have the right to terminate the Prepaid Energy Sales Agreement by notice to CCCFA. See "THE PREPAID ENERGY SALES AGREEMENT—*Energy Remarketing*" and "—*Termination*".

[*] Preliminary; subject to change.

## THE ENERGY SUPPLIER, MSCG AND MORGAN STANLEY

*Set forth below is certain information regarding the Energy Supplier, MSCG and Morgan Stanley that has been obtained from such persons and other sources believed to be reliable. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Energy Supplier, MSCG or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.*

*MSES.* The Energy Supplier is an indirect, wholly-owned subsidiary of Morgan Stanley. The FERC has granted the Energy Supplier market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services. The Energy Supplier is not registered with the CFTC in any capacity, does not engage in swap dealing activities, and does not provide advisory or structuring services relating to swaps. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the Interest Rate Swap and the MSES Commodity Swap are guaranteed by Morgan Stanley under the Morgan Stanley Guarantees described herein.

*MSCG*. MSCG is an indirect, wholly-owned subsidiary of Morgan Stanley. MSCG is engaged, among other things, in client facilitation and market-making activities in commodities and commodity derivative contracts. MSCG is provisionally registered as a swap dealer with the CFTC.

*Morgan Stanley.* Morgan Stanley is a global financial services firm that, through its subsidiaries and affiliates, provides a wide variety of products and services to a large and diversified group of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley was originally incorporated under the laws of the State of Delaware in 1981, and its predecessor companies date back to 1924. Morgan Stanley is a financial holding company regulated by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended. Morgan Stanley conducts its business from its headquarters in and around New York City, its regional offices and branches throughout the U.S., and its principal offices in London, Tokyo, Hong Kong and other world financial centers. Morgan Stanley's principal executive offices are at 1585 Broadway, New York, New York 10036, and its telephone number is (212) 761-4000.

The senior unsecured long-term debt of Morgan Stanley is rated "A1" by Moody's, "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 MSES Commodity Swap. Under no circumstance is the Energy Supplier or Morgan Stanley obligated to pay any amounts owed in respect of the Bonds.

## THE POWER SUPPLY CONTRACT

*General*

Under the Power Supply Contract, CCCFA has agreed to sell and deliver to the Project Participant, and the Project Participant has agreed to purchase and receive from CCCFA at the delivery point, quantities

of EPS Compliant Energy, which shall be comprised of Assigned Energy and other EPS Compliant Energy delivered to CCCFA by the Energy Supplier under the Prepaid Energy Sales Agreement.

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 Participant, see APPENDIX A.

*Pricing Provisions*

*Contract Price.* For each MWh of Prepaid Energy delivered to a Project Participant, the Project Participant shall pay CCCFA the applicable Contract Price. The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products. The *"Initial EPS Energy Period"* with respect to a Project Participant is defined in the Prepaid Energy Sales Agreement as the period corresponding the term of the assignment made by such Project Participant under its the Initially Assigned PPA. 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, not less than the Contract Price. See "THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*".

Through the Clean Energy Project, the Project Participant anticipates realizing a discount to existing fixed price contract price or to market Energy prices. No assurance can be given as to the total actual discount the Project Participant will realize.

*Project Administration Fee*

Under the Power Supply Contract, the Project Participant is required to pay to CCCFA annually a Project Administration Fee in an amount equal to its share of the Operating Expenses budgeted by CCCFA for the coming year, and to pay such additional amounts as and when required in the event amounts on deposit in the Administrative Fee Fund are at any time insufficient to Operating Expenses then due or which have accrued and will become payable prior to the next annual payment date of the Project Administration Fee. The Project Administration Fee and such other amounts are payable to the Trustee on behalf of CCCFA and required to be deposited in the Administrative Fee Fund and applied by the Trustee to pay Operating Expenses upon receipt of an invoice therefor from CCCFA.

*Assignment of Power Purchase Agreements*

*General.* Concurrently with the execution of its Power Supply Contract, the Project Participant will assign the Initial Assigned Rights and Obligations to the Energy Supplier for delivery under the Prepaid Energy Sales Agreement.

Commencing six months prior to the expiration of any EPS Energy Period, or otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, the

Project Participant shall exercise Commercially Reasonable Efforts to assign the Assigned Rights and Obligations under one or more Assigned PPAs, subject to MSCG's consent thereto, and MSCG has the right to consent to, pursuant to which the Project Participant is purchasing EPS Compliant Energy and associated attributes, and MSCG will be obligated to sell and deliver Assigned Energy it receives under all Assigned Rights and Obligations to the Energy Supplier pursuant to the Energy Management Agreement, and the Energy Supplier will be obligated to deliver such EPS Compliant Energy and associated attributes to CCCFA pursuant to the Prepaid Energy Sales Agreement. See "THE CLEAN ENERGY PROJECT - *Assignment of Power Purchase Agreements by the Project Participant*".

*Failure to Obtain EPS Compliant Energy.* To the extent an EPS Energy Period terminates or expires and the Project Participant and the Energy Supplier have been unable to obtain EPS Compliant Energy for delivery, then the Energy Supplier shall remarket the Base Energy pursuant to the Prepaid Energy Sales Agreement, the obligations of the Project Participant and the Energy Supplier described under this heading shall continue to apply and the Project Participant may not make any new commitment to purchase Priority Energy during such a remarketing. See "THE PREPAID ENERGY SALES AGREEMENT – *Energy Remarketing*" and "THE POWER SUPPLY CONTRACT – *Remarketing of Energy*".

*Billing and Payment*

Not later than ten days following the end of the month during the Delivery Period, CCCFA must provide a monthly billing statement of the amount due for Energy. The due date for payment by the Project Participant will be the 20th day of the month following the month of delivery (or if such day is not a Business Day, the preceding Business Day). If the Project Participant disputes the appropriateness of any charge or calculation in any billing statement, the Project Participant, within the time provided for payment, must notify CCCFA of the existence of and basis for such dispute and must pay all amounts billed by CCCFA, including any amounts in dispute. If it is ultimately determined that the Project Participant did not owe the disputed amount, CCCFA must pay the Project Participant the disputed amount plus interest.

*Annual Refunds*

CCCFA has agreed to provide annual refunds to the Project Participant from amounts available for distribution pursuant to the Indenture. In determining the amount of such refunds, CCCFA may reserve such funds as may be required under the terms of the Indenture or as it deems reasonably necessary and appropriate to cover anticipated costs and expenses to be incurred in the next succeeding bond year, with certain limitations.

*Covenants of the Project Participant*

*Operating Expense*. The Project Participant covenants (a) to make the payments on its part due under the Power Supply Contract from the revenues of its electric utility system, and only from such revenues, as an item of operating expenses and a cost of 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 Qualifying Use Requirements. The Project Participant further agrees to provide monthly reports to CCCFA with respect to the quantity of proceeds from sales of Energy that were sold in a transaction that does not comply with the Qualifying Use Requirements and that have not been remediated by applying such proceeds to purchase Energy that are used in compliance with the Qualifying Use Requirements. The amount of any such unremediated proceeds will be entered on the ledger system maintained by MSES under the Prepaid Energy Sales Agreement.

*Priority Energy.* The Project Participant agrees to purchase and receive the Base Energy and Assigned Quantities to be delivered under its Power Supply Contract (a) in priority over and in preference to all other Energy available to it that are not Priority Energy; and (b) on at least a *pari passu* and non-discriminatory basis with other Priority Energy. For purposes of this covenant and during the Delivery Period, *"Priority Energy"* means (a) Base Energy and Assigned Quantities, and (b) other Energy that the Project Participant is obligated to take under a long-term agreement that is purchased with or generated using capacity that was constructed using the proceeds of tax-exempt bonds, notes, or other obligations.

*Delivery Points; Title and Risk of Loss*

*Assigned Energy*. Assigned Energy delivered under the Power Supply Contract shall be Scheduled for delivery to and receipt at the applicable Assigned Delivery Point specified in the applicable Assignment Agreement. All other Assigned Energy will be delivered pursuant to the terms of the applicable Assignment Agreement. Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Agreement.

*Title*. Title to and risk of loss of the Prepaid Energy delivered under each Power Supply Contract shall pass from the CCCFA to the Project Participant at the applicable Assigned Delivery Point. The transfer of title and risk of loss for Assigned Energy shall be in accordance with the applicable Assignment Agreement.

*Failure to Perform*

To the extent that quantities of Assigned Energy are not delivered to the Project Participant for reasons other than force majeure, the remarketing provisions of the Prepaid Energy Sales Agreement shall apply. See "THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*". Neither the Project Participant nor CCCFA has any liability to one another for any failure to take or deliver Assigned Energy, except as described in this section under "— *Assignment of Power Purchase Agreements*."

*Remarketing of Energy*

In the event the Project Participant does not require all or any portion of its contract quantity under its Power Supply Contract as a result of (i) insufficient demand by its retail customers, or (ii) a change in Law, the Project Participant may request that the Energy Supplier sell such portion of Base Energy or Assigned Energy as required under the Prepaid Energy Sales Agreement. Under the Prepaid Energy Sales Agreement, CCCFA arranges for sales through the Energy Supplier in accordance with the remarketing provisions and procedures set forth in that agreement. If the Energy Supplier successfully makes such a sale or sales, CCCFA must credit against the amount owed by the Project Participant to CCCFA the amount received from the Energy Supplier, such credit not to exceed the Contract Price for the Energy so sold. See "THE PREPAID ENERGY SALES AGREEMENT — *Energy Remarketing*".

*Force Majeure*

Except with regard to a party's obligation to make payments under the Power Supply Contract, neither party shall be liable to the other for failure to perform its obligations under the Power Supply Contract to the extent such failure was caused by an event of "*Force Majeure*" (as defined in APPENDIX B).

*Default*

Each of the following is a default under the Power Supply Contract:

(a) Any representation or warranty made by a party in the Power Supply Contract shall prove to have been incorrect in any material respect when made; and

(b) A party fails to perform, observe or comply with any covenant, agreement or term contained in the Power Supply Contract, and such failure continues for more than thirty days (in the case of the CCCFA) or more than fifteen days (in the case of the Project Participant) following the receipt of written notice thereof.

In addition, each of the following is a default by the Project Participant under the Power Supply Contract:

(a) Failure by the Project Participant to pay when due any amounts owed to CCCFA under the Power Supply Contract, subject to certain grace periods; and

(b) The insolvency or bankruptcy of the Project Participant.

Upon the occurrence of a default by the Project Participant described in (b) above, the Power Supply Contract will automatically terminate and all amounts due to the non-defaulting party will be immediately

due and payable. Upon the occurrence of the other defaults described above, the non-defaulting party may terminate the Power Supply Contract and/or declare all amounts due to it to be immediately due and payable. During the existence of a default, the non-defaulting party may exercise all other rights and remedies available to it at law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of the Power Supply Contract.

In addition to the remedies described above, during the existence of any default by the Project Participant, CCCFA may suspend its performance under the Power Supply Contract and discontinue the supply of all or any portion of the Energy otherwise to be delivered to the Project Participant under the Power Supply Contract.

If CCCFA exercises its right to discontinue Energy deliveries to the Project Participant, such service may only be reinstated, as determined by CCCFA, upon (a) payment in full by the Project Participant of all amounts then due and payable under its Power Supply Contract and (b) unless otherwise agreed to by CCCFA, payment in advance by the Project Participant at the beginning of each month (for such time period as CCCFA deems appropriate) of amounts estimated by CCCFA to be due from the Project Participant for the future delivery of Energy for such month. If the Project Participant fails to accept the Energy tendered, CCCFA has the right to sell the Energy to third parties.

In the event of any default, the non-defaulting party may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance.

*Assignment*

The provisions of the Power Supply Contract are binding on the successors and assigns of such contract. Neither party may assign the Power Supply Contract to another party without the prior written consent of the other party, except that CCCFA may assign its interests to secure its obligations under the Indenture. Prior to assigning all or any part of its interest in the Power Supply Contract, the Project Participant is required to deliver to CCCFA a Rating Confirmation from each rating agency then rating the Bonds. Any applicable Assignment Agreement will terminate concurrent with the assignment of the Power Supply Contract.

## CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

*General*

CCCFA is a joint powers authority formed pursuant to the Act and the joint powers agreement ("the *JPA Agreement*") made among those public agencies which are its members. CCCFA was incorporated and organized in 2021 pursuant to by the members thereof, those being the Project Participant (East Bay Community Energy Authority), Silicon Valley Clean Energy, Marin Clean Energy and Central Coast Community Energy (each, a "*Founding Member*" and, together with any members which may later be added as parties to the JPA Agreement, a "*Member*").

Each Member is a community choice aggregator, and a public agency as defined in the Act, which operates a community choice aggregation program with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into

agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs.

CCCFA was formed for, among other purposes, the purpose of financing energy prepayments which can be financed with tax advantaged bonds for the benefit of its Members.

*Powers and Authority*

Under the provisions of the Act, CCCFA has all of the powers common to the Members, and any and all power in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations, including: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations (a "*Prepayment Project*"). CCCFA shall have the power to issue, incur, sell and deliver bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects.

Under the provisions of the JPA Agreement and the Act, CCCFA has (among others) the following powers:

(a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;

(b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);

(c) to employ agents and employees;

(d) to acquire, manage, maintain or operate any building, works or improvements;

(e) to acquire, hold, lease or dispose of property;

(f) to incur debts (including without limitation through the issuance or incurrence of bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);

(g) to sue and be sued in its own name;

(h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;

(i) to receive, collect, invest and disburse moneys;

(j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

(k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;

(l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of the JPA Agreement.

The JPA Agreement shall continue in full force and effect until terminated as provided in therein; *provided*, *however*, the JPA Agreement cannot be terminated while either (a) any bonds of CCCFA, including the Bonds, remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any bonds.

*Governance and Management*

*Board of Directors*. CCCF is governed by a Board of Directors (the "*Board*") consisting of one director for each Founding Member. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA. The Board may appoint a part-time or full-time General Manager and may appoint one or more part-time or full-time Assistant General Managers. The General Manager would be responsible for the day-to-day operation and management of CCCFA. The names of the current directors of CCCFA are listed on the roster page at the front of this Official Statement.

*Management.* The Board has not appointed a General Manager or Assistant General Manager. CCCFA's current management team consists of Garth Salisbury as Treasurer/Controller and Michael Callahan as General Counsel.

*Other CCCFA Projects*

[Describe 2021A and 2021B Projects]

CCCFA may issue future bonds to purchase prepaid electricity supplies for sale to participating municipal utilities, with the revenues from such sales pledged to the payment of such bonds. Such revenues will not be pledged, nor may such revenues be used, to pay amounts due with respect to the Bonds.

In furtherance of its corporate and public purposes, CCCFA intends to acquire and finance supplies of electricity on a prepaid basis for sale to other community choice aggregators. CCCFA is currently developing additional Clean Energy Projects under transaction and financing structures that are expected to be generally similar to the structure of the Clean Energy Project. CCCFA can give no assurance as to the timing or terms of these projects or that they will be completed. A range of factors that are outside of the control of CCCFA, including the final negotiation of transaction documents, the approval of commodity supply contracts by the prospective project participants, changes in market prices and rates, the receipt of bond ratings, and other factors could result in these transactions not being completed.

Any additional Clean Energy Projects that may be undertaken by CCCFA will be separate and distinct transactions, and the bonds issued to finance these projects will be payable solely from the

commodity sales and other revenues pledged for their payment. In no event will the Revenues and Trust Estate pledged to the payment of the Bonds be used to pay any other bonds of CCCFA.

*Separate Obligations*

THE BONDS, ANY FUTURE BONDS THAT MAY BE ISSUED BY CCCFA AND ANY FUTURE CONTRACTS THAT CCCFA MAY ENTER INTO TO ACQUIRE ADDITIONAL ENERGY OR ELECTRICITY ARE AND WILL BE SEPARATE AND DISTINCT OBLIGATIONS OF CCCFA. ANY FUTURE BONDS OR CONTRACTS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES PLEDGED BY THE INDENTURE TO THE PAYMENT OF THE BONDS, AND THE BONDS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES DERIVED FROM ANY FUTURE PROJECT, CLEAN ENERGY PROJECT OR CONTRACT OF CCCFA.

*Limited Liability*

CCCFA DOES NOT HAVE THE POWER TO LEVY AD VALOREM PROPERTY TAXES. ALL BONDS ISSUED BY CCCFA ARE PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM ITS ACTIVITIES PURSUANT TO ITS STATUTORY PURPOSES AND POWERS AND IN ACCORDANCE WITH THE APPLICABLE FINANCING DOCUMENTS. THE BONDS ARE PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE PLEDGED PURSUANT TO THE INDENTURE.

## COMMUNITY CHOICE AGGREGATORS

*General*

The Project Participant is a "community choice aggregator" pursuant to Section 331.1 of the Public Utilities Code (a "*CCA*"). See APPENDIX A for information with respect to the Project Participant.

*Establishment of Community Choice Aggregators*

A CCA may be established by any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a community-wide Energy buyers' program, and by any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Joint Powers Act, provided in either case that the entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003. "Local publicly owned electric utility" means a municipality or municipal corporation operating as a "public utility" and certain municipal utility districts, public utility districts, irrigation districts, or joint powers authorities that include one or more of these agencies and that owns generation or transmission facilities or furnishes electric services over its own or its members' electric distribution systems.

*Community Choice Service Model*

Once a community forms or joins a CCA, the CCA is the default energy provider in that community. The CCA procures energy for customers in that community, but the investor-owned utility for that community continues to provide transmission, distribution and billing services to customers. Revenues

from the sale of energy by the CCA are delivered by the investor-owned utility to the CCA as they are received over the course of the billing period.

*Service Contract Requirements and Registration with the Public Utilities Commission*

CCAs are required to have an operating service agreement with the applicable investor-owned utility prior to furnishing electric service to consumers within its jurisdiction. The service agreement must include performance standards that govern the business and operational relationship between the CCA and the investor-owned utility. CCAs are also required to register with the California Public Utilities Commission (the "*PUC*"), which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters. Once notified of a CCA program, the applicable investor-owned utility is required to transfer all applicable accounts to the CCA within a 30-day period from the date of the close of the utility's normally scheduled monthly metering and billing process.

*Customer Participation and Opt-out Rights*

Participation in a CCA is voluntary. Each local government seeking to form or join a CCA must adopt an appropriate authorizing resolution or ordinance. When a community forms or joins a CCA, customers are given advance notice and have the choice to opt-out of the CCA program prior to or after transition to the CCA, and instead receive Energy from the applicable investor-owned utility. Customers that do not opt-out are automatically enrolled in the program.

*Regulatory Compliance*

CCAs are "load-serving entities" and as such are required to comply with the renewable portfolio standards and reliability standards established by the PUC and the California Energy Commission (the "*CEC*") and file integrated resource plans and other periodic reports with the PUC and the California Energy Commission.

*Cost Recovery Related to Transfer of Customers to a CCA*

Although investor-owned utilities do not purchase power for CCA customers, they continue to deliver the power. Investor-owned utilities also have the obligation to provide electric service to customers that opt out of CCA service as the "provider of last resort." In order to compensate investor-owned utilities for investments in power generation and long-term power purchase contracts associated with the loss of customers to CCAs, the PUC has established a "power charge indifference adjustment" (the "*PCIA*") applicable to CCA customers. The PCIA is calculated by taking the difference between (i) the "actual portfolio cost" related to utility's power procurement (e.g., utility-owned generation and purchased power), and (ii) the "market value of the portfolio," which is measured by the Market Price Benchmark (the "*MPB*") and the megawatt hours of generation.

The MPB is based on a PUC approved methodology for calculating the current market cost of renewables and natural gas-fueled power. If the investor-owned utility's actual portfolio cost is above-market value, the departing load customers pay their share of the difference in the form of a PCIA based on their power consumption. The amount of the PCIA applicable to a CCA customer depends on when a customer left the investor-owned utility and what the investor-owned utility's portfolio was at the time. Each departing load customer pays the assigned "vintage PCIA." For example, a customer who departed in

2019 pays the "2019 vintage PCIA" which only includes the above market costs of pre-2020 vintage power procured by the investor-owned utility.

In addition to PCIA charges, CCA customers are required to pay certain other "non-bypassable departing load charges", including a nuclear decommissioning charge, a public purpose charge and a cost allocation charge to pay for new resources needed for ongoing system reliability.

## THE COMMODITY SWAPS

*CCCFA Commodity Swap*

CCCFA has entered into the CCCFA Commodity Swap under which, over a 30 year term, CCCFA will pay a floating Energy price at a specified pricing point and will receive a fixed Energy price for the notional quantities specified in the CCCFA Commodity Swap for each month of such term.

Under the CCCFA Commodity Swap, for each calendar month that the relevant floating price of Energy is greater than the fixed price specified in a CCCFA Commodity Swap, CCCFA will be obligated to pay to the Commodity Swap Counterparty an amount equal to (x) the difference between the floating price and the fixed price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the fixed price specified in the CCCFA Commodity Swap is greater than the relevant floating price of Prepaid Energy for a month, the Commodity Swap Counterparty will be obligated to pay CCCFA an amount equal to (x) the difference between the fixed price and floating price multiplied by (y) a notional quantity equal to the quantity of Prepaid Energy scheduled to be delivered during such month by the Energy Supplier under the Prepaid Energy Sales Agreement. If the relevant floating price for a calendar month is equal to the specified fixed price, no payment will be owed by either party to the other under the CCCFA Commodity Swap.

*MSES Commodity Swap*

The Energy Supplier has entered into a comparable MSES Commodity Swap with the same Commodity Swap Counterparty under which the Energy Supplier pays a fixed Energy price and receives a floating Energy price for the same notional quantities at the same pricing points. The Energy Supplier's payment obligations to the Commodity Swap Counterparty under the MSES Commodity Swap will be guaranteed under the Morgan Stanley Commodity Swap Guarantee.

*Form of Commodity Swaps*

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, each party with a net obligation under a Commodity Swap (based on the relative values of the fixed price and relevant index prices) will

pay that net obligation to the other party on the 25th day of the month (or next Business Day) the calendar month following the month to which the applicable day-ahead market prices relate.

*Early Termination*

*General*. Each of the Commodity Swaps will be subject to early termination under certain circumstances. This early termination can be triggered automatically or upon the election by the non-defaulting party as described below. No settlement or other termination payment (other than previously accrued amounts) would be due to any party as a result of any early termination of either Commodity Swap, except that MSES agrees to pay a make-whole amount equal to the discounted present value of the fee the Commodity Swap Counterparty would have received for the remainder of the then-current Reset Period if the MSES Commodity Swap is terminated for certain reasons.

*Automatic Termination of Both Commodity Swaps*. The termination of the Prepaid Energy Sales Agreement for any reason would result in the automatic termination of both the CCCFA Commodity Swap and the MSES Commodity Swap; provided that, in the case of certain termination events for which MSES is the defaulting party under the Prepaid Energy Sales Agreement, MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a make-whole amount equal to the discounted present value of the fee the Commodity Swap Counterparty would have received in the then-current Reset Period (a "*Termination Fee*").

*Automatic Termination of the CCCFA Commodity Swap.* MSES's delivery of notice designating an early termination date under the MSES Commodity Swap results in the automatic termination of the CCCFA Commodity Swap.

*Elective Termination of the CCCFA Commodity Swap*. Each of the following events of default and termination events would provide the non-defaulting party or the non-affected party (or, in the case of tax indemnification, the party required to make an additional payment or receive a reduced payment) the right to terminate the CCCFA Commodity Swap if it is not cured within the applicable cure period:

- the affected party's failure to pay amounts due to the other party under the CCCFA Commodity Swap notwithstanding any payment from the Custodian to CCCFA under the MSES Custodial Agreement following the Commodity Swap Counterparty's failure to pay any amounts when due; *provided, however,* a termination event will not occur (a) due to CCCFA's failure to pay on or before the 120th day after notice of such failure is given to CCCFA (*provided, however*, if CCCFA did not, for any reason, receive payment for sufficient Put Receivables to avoid such payment failure, then on the third Business Day after notice of such failure is given to CCCFA), or (b) due to the Commodity Swap Counterparty's failure to pay on or before the third Business Day after notice of such failure is given to the Commodity Swap Counterparty;

- a representation made by the defaulting party proves to have been incorrect or misleading in any material respect;

- if a party becomes subject to certain insolvency events;

- if the defaulting party or its credit support provider participates in a merger or similar business combination (or, additionally, if such party is CCCFA, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, CCCFA) and (a) the surviving entity does not assume the obligations of such party or its credit support provider under the CCCFA Commodity Swap**,** (b) the benefits of any credit support document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under the CCCFA Commodity Swap, or (c) in the case of CCCFA, the Trust Estate is no longer available for the satisfaction of such surviving entity's obligations to the Commodity Swap Counterparty under the CCCFA Commodity Swap;

- if performance or receipt of performance of the CCCFA Commodity Swap becomes illegal for either party, such party would have the right to terminate the CCCFA Commodity Swap;

- if a party becomes (or parties become) obligated to pay additional tax indemnification amounts or will receive payments that are lessened by tax indemnification amounts because of changed laws or corporate changes, including by way of merger or similar business combination, to a party, the party or parties impacted by the need for such additional payments or the receipt of reduced payments will have the right to terminate the CCCFA Commodity Swap unless the other party agrees to waive such indemnification requirement for increased payments or indemnifies the party for any reduced payments;

- if the affected party participates in a merger or similar business combination and the creditworthiness of the surviving entity is materially weaker than the original party;

- (a) any withdrawal of the Commodity Swap Counterparty's Credit Rating or (b) any reduction in the Commodity Swap Counterparty's Credit Rating below "Baa3" by Moody's or below "BBB-" by S&P, where *"Commodity Swap Counterparty's Credit Rating"* means the credit rating assigned by the applicable rating agency to the Commodity Swap Counterparty's senior, unsecured long-term debt obligations (not supported by third party credit enhancements;

- if certain provisions of the Prepaid Energy Sales Agreement related to termination of the Prepaid Energy Sales Agreement or the Receivables Purchase Provisions are modified without the Commodity Swap Counterparty's consent;

- CCCFA fails to promptly exercise its right to suspend all energy deliveries under a Power Supply Contract to any Project Participant that fails to pay when due any amounts owed to CCCFA thereunder;

- if the Indenture is modified in breach of the Commodity Swap Counterparty's consent rights under the Indenture and such breach is not cured within 10 days of notice to the Commodity Swap Counterparty; and

- upon CCCFA's receipt of notice from MSES designating an early termination date under the MSES Commodity Swap.

An event of default also exists for a party's failure to comply with or perform any agreement or obligation under the CCCFA Commodity Swap other than payment obligations, except that such event does not give the non-defaulting party the right to designate an early termination date pursuant to the CCCFA Commodity Swap or to assert a claim for monetary damages as a result of such event of default. Such an event of default permits the non-defaulting party to pursue such equitable remedies, including specific performance, as may be available to it.

*Elective Termination of the MSES Commodity Swap*. Each of the following events of default or termination events would provide the non-defaulting or non-affected party (or, in the case of tax indemnification, the party required to make an additional payment or receive a reduced payment) the right to terminate the MSES Commodity Swap if it is not cured within the applicable cure period:

- the defaulting party's failure to pay amounts due to the other party under the MSES Commodity Swap;

- the defaulting party's failure to comply with or perform any agreement or obligation under the MSES Commodity Swap other than payment obligations;

- if MSES, the Commodity Swap Counterparty or Morgan Stanley fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the Credit Support Annex executed as part of the MSES Commodity Swap or the Morgan Stanley Commodity Swap Guarantee, as applicable (each of the Credit Support Annex and Morgan Stanley Commodity Swap Guarantee, a "*Credit Support Document*"), or the expiration or termination of a Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect (in either case other than in accordance with their terms) prior to the satisfaction of all obligations of such party under the MSES Commodity Swap without the written consent of the other party, or MSES, the Commodity Swap Counterparty or Morgan Stanley disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, any such Credit Support Document;

- a representation made by the defaulting party proves to have been incorrect or misleading in any material respect;

- subject to a threshold, any payment default or default which results in acceleration of indebtedness by the defaulting party any indebtedness but (a) excluding with respect to Commodity Swap Counterparty deposits received in the ordinary course of banking business and (b) including MSES's obligations under the Receivables Purchase Provisions to purchase Put Receivables;

- if a party becomes subject to certain insolvency events;

- if the defaulting party participates in a merger or similar business combination and the surviving entity does not assume the obligations under the MSES Commodity Swap, or the

benefits of a credit support document fail to extend to the performance of the defaulting party under the MSES Commodity Swap;

- if performance or receipt of performance of the MSES Commodity Swap becomes illegal for either party, such party would have the right to terminate the MSES Commodity Swap;

- if a party becomes (or parties become) obligated to pay additional tax indemnification or will receive payments that are lessened by tax indemnification amounts because of changed laws or corporate changes, including by way of merger or similar business combination, to a party, the party or parties impacted by the need for such additional payments or the receipt of reduced payments will have the right to terminate the MSES Commodity Swap unless the other party agrees to waive such indemnification requirement for increased payments or indemnifies the party for any reduced payments;

- if the affected party participates in a merger or similar business combination and the creditworthiness of the surviving entity is materially weaker than the creditworthiness of the original party;

- (a) any withdrawal of the Commodity Swap Counterparty's Credit Rating or (b) any reduction in the Commodity Swap Counterparty's Credit Rating below "Baa3" by Moody's or below "BBB-" by S&P, with "Commodity Swap Counterparty's Credit Rating" having the meaning described above under *"Elective Termination of the CCCFA Commodity Swap"*;

- if certain provisions of the Prepaid Energy Sales Agreement related to termination of the Prepaid Energy Sales Agreement or the Receivables Purchase Provisions are modified without the Commodity Swap Counterparty's consent, provided that, in such case MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee;

- MSES may at its election deliver a notice of termination designating an early termination date under the MSES Commodity Swap, subject to the condition that the CCCFA Commodity Swap must terminate effective as of the same date (provided that, if no other Event of Default or Termination Event has occurred with respect to the Swap Counterparty, then MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee); and

- if the rights and obligations of MSES under the Prepaid Energy Sales Agreement are assigned to another entity and such entity's obligations under the Prepaid Energy Sales Agreement are not guaranteed by a Morgan Stanley guarantee, unless either (a) the Commodity Swap Counterparty consents to such assignment or (b) all of MSES's rights and obligations under the MSES Commodity Swap are assigned and novated to another entity pursuant to the MSES Commodity Swap; provided that, in the case of a termination due to an assignment that fails to comply with the foregoing requirements, MSES, in addition to previously accrued unpaid amounts, shall owe the Commodity Swap Counterparty a Termination Fee. See "THE PREPAID ENERGY SALES AGREEMENT—*Assignment*" above.

*Custodial Agreements*

The Energy Supplier will enter into a Custodial Agreement (the *"Energy Supplier Custodial Agreement"*), with the Commodity Swap Counterparty and The Bank of New York Mellon Trust Company, N.A., as Trustee and as custodian (in such capacity, the *"Custodian"*), to administer payments under the MSES Commodity Swaps. CCCFA will enter into a Custodial Agreement, dated as of the initial issue date of the Bonds (the *"CCCFA Custodial Agreement,"* and together with the Energy Supplier Custodial Agreement, the *"Custodial Agreements"*), with the Commodity Swap Counterparty and the Custodian, to administer payments under the CCCFA Commodity Swap. The Custodial Agreements contain provisions designed to mitigate risks to CCCFA and Bondholders resulting from a failure of the Commodity Swap Counterparty to make payments to CCCFA under the CCCFA Commodity Swap and mitigate risks to the Energy Supplier resulting from a failure of the Commodity Swap Counterparty to make payments to the Energy Supplier under the MSES Commodity Swap.

Payments made by the Energy Supplier under the MSES Commodity Swap will be made to a custodial account maintained by the Custodian under the Energy Supplier Custodial Agreements. Such amounts will not be released until the Custodian has received confirmation that the amount payable to CCCFA by the Commodity Swap Counterparty under the CCCFA Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under a CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that the Energy Supplier paid under the MSES Commodity Swap (which such amount is held in custody) to the Trustee for deposit in the Revenue Fund and that payment will be treated as a Commodity Swap Receipt. Additionally, if the MSES Commodity Swap terminates, the Energy Supplier will continue to make payments to the custodial account as if such MSES Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be used to ensure that CCCFA receives deposits in the Revenue Fund as described in the preceding sentence in the event that the Commodity Swap Counterparty does not make a required payment under the CCCFA Commodity Swap.

Payments made by CCCFA under the CCCFA Commodity Swap will be made to a custodial account maintained by the Custodian under the CCCFA Custodial Agreement. The amount in the custodial account will not be released until the Custodian has received confirmation that the amount payable to the Energy Supplier by the Commodity Swap Counterparty under the MSES Commodity Swap for such month has been paid. If the Commodity Swap Counterparty does not make a required payment under the MSES Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that CCCFA paid under the CCCFA Commodity Swap (which such amount is held in custody) to the Energy Supplier. Additionally, if a CCCFA Commodity Swap terminates, CCCFA will continue to make payments to the custodial account as if the CCCFA Commodity Swap were still in effect until the earlier of (i) replacement of the Commodity Swaps in accordance with the requirements of the Prepaid Energy Sales Agreement and (ii) termination of the Prepaid Energy Sales Agreement, and such payments will be withdrawn by the Custodian and paid to the Energy Supplier.

## THE COMMODITY SWAP COUNTERPARTY

*Set forth below is certain information regarding the Commodity Swap Counterparty. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no*

*circumstance is the Commodity Swap Counterparty obligated to pay any amount owed in respect of the Bonds.*

[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 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.

During the five-year period preceding the date of this Official Statement, CCCFA has determined that certain financial information relating to the Project Participant for its fiscal year ending June 30, 2021 was filed late. CCCFA subsequently filed such information on the Municipal Securities Rulemaking Board Electronic Municipal Market Access System. CCCFA has engaged BLX Group to assist with its continuing disclosure obligations.

*Project Participant.* Pursuant to the Power Supply Contract, the Project Participant has agreed to provide to CCCFA certain annual operating and financial information, which information will enable CCCFA to comply with the Undertaking. Failure of the Project Participant to provide such information is not a default under its Power Supply Contract, but any such failure entitles CCCFA to take such actions and to initiate such proceedings as shall be necessary to cause the Project Participant to comply with its undertaking as set forth in its Power Supply Contract.

## LITIGATION

There are no legal proceedings pending against CCCFA relating to the issuance, sale or delivery of the Bonds which could adversely affect the Clean Energy Project. In addition, there is no litigation pending or, to the knowledge of CCCFA, threatened against or affecting CCCFA or in any way questioning or in any manner affecting the validity or enforceability against CCCFA of the Bonds, the Power Supply Contract, the Prepaid Energy Sales Agreement, the CCCFA Commodity Swap, the Receivables Purchase Provisions, the Investment Agreements, the Custodial Agreements, the Indenture, or the pledge of the Trust Estate under the Indenture.

The Project Participant reports that there is no litigation pending or, to its knowledge, threatened against it questioning or in any manner affecting the validity or enforceability of the Power Supply Contract.

## NO FINANCIAL STATEMENTS

CCCFA was formed in 2021, and consequently CCCFA has not yet produced audited financial statements. Pursuant to the Undertaking described under "CONTINUING DISCLOSURE" above, CCCFA has agreed to file its audited financial statements, commencing with its audited financial statements for its fiscal year ended December 31, 2021, on the MSRB's EMMA system described above.

## FINANCIAL ADVISOR

PFM Financial Advisors LLC (the *"Financial Advisor"*) has served as financial advisor to CCCFA in connection with Clean Energy Project and the Bonds. Among other responsibilities, the Financial Advisor has provided advice and recommendations to CCCFA with respect to the structure, timing, terms of and similar matters relating to the Bonds, bond market conditions, costs of issuance and other matters relating to the Bonds and the Clean Energy Project. The Financial Advisor has also provided advice and recommendations to CCCFA, and has served as CCCFA's "qualified independent representative," with respect to the CCCFA Commodity Swap. The Financial Advisor has reviewed this Official Statement, but has not audited, authenticated or otherwise verified the information set forth herein, and makes no guaranty, warranty or representation with respect to the accuracy and completeness of the information contained in this Official Statement. The Financial Advisor's fees are contingent upon the sale and delivery of the Bonds, and are based, in part, on the proceeds of the Bonds.

## UNDERWRITING

Pursuant to the purchase contract relating to the Bonds between CCCFA and Morgan Stanley & Co. LLC, as the underwriter of the Bonds (the *"Underwriter"*), the Underwriter has agreed, subject to certain conditions to purchase the Bonds from CCCFA at an aggregate purchase price of $_____ (representing the principal amount of the Bonds, plus original issue premium of $_____, less Underwriter's discount of $_____). The obligation of the Underwriter to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract. The Underwriter is obligated to purchase all the Bonds if any are purchased. The Bonds may be offered and sold to certain dealers and others at prices lower than the initial offering prices, and such initial offering prices may be changed from time to time by the Underwriter. The Underwriter has no obligations other than those that are set forth in the purchase contract. The payment of the Bonds is not guaranteed by the Underwriter.

Morgan Stanley & Co. LLC has entered into a retail distribution arrangement with its affiliate Morgan Stanley Smith Barney LLC. As part of the distribution arrangement, Morgan Stanley & Co. LLC may distribute municipal securities to retail investors through the financial advisor network of Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Bonds.

Morgan Stanley & Co. LLC (together with its affiliates) is a full service financial institution engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Morgan Stanley & Co. LLC and its affiliates have provided, and may in the future provide, a variety of these services to CCCFA and to persons and entities with relationships with CCCFA, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own accounts and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of CCCFA (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with CCCFA. The Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriter is not acting as financial advisor to CCCFA in connection with the Bonds or the offering or sale of the Bonds.

## CERTAIN RELATIONSHIPS

The Energy Supplier, which is also the Receivable Purchaser, the Interest Rate Swap Counterparty and a party to the MSES Commodity Swap is a wholly owned indirect subsidiary of Morgan Stanley. The payment obligations of the Energy Supplier under the Prepaid Energy Sales Agreement, the MSES Commodity Swap and the Interest Rate Swap are unconditionally guaranteed by Morgan Stanley under the Morgan Stanley Guarantees. The Underwriter of the Bonds, Morgan Stanley & Co. LLC, is also a wholly owned subsidiary of Morgan Stanley.

Neither the Energy Supplier nor Morgan Stanley has guaranteed or is responsible for the payment of the Bonds. The obligations of the Energy Supplier and, by virtue of the Morgan Stanley Guarantees, Morgan Stanley are limited to those set forth in the Prepaid Energy Sales Agreement, the MSES Commodity Swap, the Interest Rate Swap and the Debt Service Account Investment Agreement (if the Energy Supplier or an affiliate is the Investment Agreement Provider). Neither the Energy Supplier nor Morgan Stanley takes any responsibility for the information set forth in this Official Statement other than the information relating to the Morgan Stanley Guarantees set forth under the captions "INTRODUCTION—*Morgan Stanley Guarantees*", "THE PREPAID ENERGY SALES AGREEMENT—*Security*", "THE INTEREST RATE SWAP—*Morgan Stanley Guarantee*" and "THE COMMODITY SWAPS—*The MSES Commodity Swap*" and under the heading "THE ENERGY SUPPLIER AND MORGAN STANLEY".

## RATING

Moody's Investors Service, Inc. 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 E hereto.

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Bonds which is excluded from gross income for federal income tax purposes and 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; and for the Underwriter by Nixon Peabody LLP.

CCCFA will receive an opinion from counsel to the Project Participant on the date of original delivery of the Bonds, to the effect that the Power Supply Contract of the Project Participant has been duly authorized, executed and delivered by the Project Participant and constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms. The enforceability of the Power Supply Contract may be limited by or subject to applicable bankruptcy, insolvency, moratorium, reorganization, other laws affecting creditors' rights generally and by general principles of equity, public policy and commercial reasonableness.

## MISCELLANEOUS

Any statements in this Official Statement involving matters of opinion, estimates or forecasts, whether or not expressly so stated, are intended as such and not as representations of fact. The Appendices attached hereto are an integral part of this Official Statement and must be read in conjunction with the foregoing material. This Official Statement is not to be construed as a contract or agreement between CCCFA and the purchasers or owners of the Bonds.

The delivery of this Official Statement has been duly authorized by the Board of Directors of CCCFA.

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**

By: _____
Chair

# APPENDIX A

## THE PROJECT PARTICIPANT

**APPENDIX B**
**DEFINITIONS OF CERTAIN TERMS**

*"Act"* means the Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time.

*"Administrative Fee Fund"* means the fund of that name created under the Indenture.

*"Applicable Factor*" means (a) with respect to the initial issuance of a Series of Bonds bearing interest at a SOFR Index Rate, the percentage or factor of the SOFR Index determined by the Underwriter and specified in the Index Rate Determination Certificate for such Series of Bonds, or (b) with respect to a Series of Bonds for which the Interest Rate Period is being converted to a SOFR Index Rate Period (including a change in such Interest Rate Period from one SOFR Index Rate Period to another SOFR Index Rate Period), the percentage or factor of the SOFR Index determined by the Remarketing Agent and specified in the applicable Index Rate Determination Certificate or Index Rate Continuation Notice, provided in each case that CCCFA delivers to the Trustee a Favorable Opinion of Bond Counsel addressing the selection of such percentage or factor. The Applicable Factor shall be determined by the Underwriter or the Remarketing Agent, as applicable, in accordance with the Indenture and included in the applicable Index Rate Determination Certificate, and once determined shall remain constant for the duration of the applicable SOFR Index Rate Period.

*"Assigned Delivery Point"* means the delivery point for Assigned Energy as set forth in the applicable Assignment Agreement.

*"Assigned Energy"* means EPS Compliant Energy assigned pursuant to an Assignment Agreement.

*"Assigned Product"* means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement

*"Assigned RECs"* means any RECs to be delivered to MSCG or the Energy Supplier pursuant to any Assigned Rights and Obligations.

*"Assigned Rights and Obligations"* means a portion of the Project Participant's rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

"*Assignment Agreements*" mean the Initial Assignment 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 of the Prepaid Energy Sales Agreement, by and among MSCG, the Energy Supplier, CCCFA and the Project Participant.

*"Assignment Payment"* means any payment received from the Energy Supplier in connection with an assignment of the Prepaid Energy Sales Agreement to a replacement energy supplier.

*"Assignment Payment Fund"* means the Assignment Payment Fund established under the Indenture.

*"Base Energy"* means Firm (LD) Energy to be delivered to an Energy Delivery Point.

*"Bond Counsel"* means 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 CCCFA.

*"Bond Payment Date"* means each date on which (a) interest on the Bonds is due and payable, (b) an Interest Rate Swap Payment is due, or (c) principal of the Bonds is payable at maturity or pursuant to Sinking Fund Installments.

"*Bond Purchase Fund*" means the fund by that name established pursuant to the Indenture, including the Remarketing Proceeds Account and the Issuer Purchase Account.

"*Bond Registrar*" means the Trustee and any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by CCCFA to perform the duties of Bond Registrar under the Indenture.

"*Bondholder*" or "*Holder*" or "*Owner*" means any Person who shall be the registered owner of any Bond or Bonds.

*"Business Day"* means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in New York, New York, or the cities in which are located the designated corporate trust offices of the Trustee, the Custodian or a Calculation Agent or the operational office of CCCFA 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 and the SOFR Index Rate, any day that SIFMA recommends that the fixed income departments of its members be closed for purposes of trading in United States government securities.

*"CAISO"* means California Independent System Operator or its successor.

*"Calculation Agent"* means The Bank of New York Mellon Trust Company, N.A., as Calculation Agent for the Series 2022A-2 Bonds and the Series 2022A-3 Bonds.

*"CCCFA Custodial Agreement"* means that certain Custodial Agreement, dated as of the date of issuance of the Bonds, by and among the Swap Counterparty, CCCFA, and The Bank of New York Mellon Trust Company, N.A., as Trustee and custodian, as the same may be amended, modified or supplemented from time to time.

*"CCCFA Commodity Swap"* means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date hereof, by CCCFA and the Swap Counterparty, and (ii) each replacement CCCFA Swap entered into pursuant to the Prepaid Energy Sales Agreement.

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

*"Clean Energy Project"* means, collectively, CCCFA's purchase of Energy pursuant to the Prepaid Energy Sales Agreement and related contractual arrangements and agreements, and the purchase of any Energy to replace Energy not delivered as required pursuant to the Prepaid Energy Sales Agreement, and the sale of Energy to the Project Participant pursuant to the Power Supply Contract.

*"Commercial Paper Interest Rate Period"* means, with respect to a Series of Bonds, each period comprised of CP Interest Terms for the Bonds of such Series, during which CP Interest Term Rates are in effect for the Bonds of such Series.

*"Commercially Reasonable"* or *"Commercially Reasonable Efforts"* means, with respect to any purchase or sale or other action required to be made, attempted or taken by the Project Participant, CCCFA or the Energy Supplier under the Power Supply Contract or the Prepaid Energy Sales Agreement, as applicable, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

*"Commodity Swap Counterparty"* means [_____], a [_____], and any other Person that becomes counterparty to CCCFA under the CCCFA Commodity Swap or to the Energy Supplier under a the Energy Supplier Swap, in each case pursuant to the Prepaid Energy Sales Agreement.

*"Commodity Swap Payment Fund"* means the Commodity Swap Payment Fund established pursuant to the Indenture.

*"Commodity Swap Payments"* means, as of each scheduled payment date specified in the CCCFA Commodity Swap, the amount, if any, payable to the Commodity Swap Counterparty by CCCFA (including any such amount paid to the Custodian pursuant to the CCCFA Custodial Agreement).

*"Commodity Swap Receipts"* means, as of each scheduled payment date specified in the CCCFA Commodity Swap, the amount, if any, payable to CCCFA by the Commodity Swap Counterparty.

"*Commodity Swaps*" means, collectively, the CCCFA Commodity Swap and the MSES Commodity Swap.

*"Contract Price"* means, with respect to EBCE, (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.

*"Contract Quantity"* means, with respect to each Month during the Delivery Period, (i) the Monthly Quantity of Assigned Energy set forth in the applicable exhibit to the Prepaid Energy Sales Agreement for such Month and (ii) the Hourly Quantity of Base Energy set forth in the applicable exhibit to the Prepaid Energy Sales Agreement for such Month, as such exhibits shall be updated from time to time in accordance with the Prepaid Energy Sales Agreement.

*"Cost of Acquisition"* means all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing the Clean Energy Project, including:

(a) the amount of the prepayment required to be made by CCCFA under the Prepaid Energy Sales Agreement;

(b) the amount for deposit into the Capitalized Interest Subaccount of the Debt Service Account for capitalized interest on the Bonds, with such interest being calculated in accordance with the definition of "Debt Service;"

(c) the costs and expenses incurred in the issuance and sale of the Bonds, including, without limitation, legal, financial advisory, accounting, engineering, consulting, municipal advisory, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds and preparation of the Indenture;

(e) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of the Clean Energy Project;

(f) the allowance for working capital requirements of CCCFA with respect to the Clean Energy Project in such amounts as shall be deemed reasonably necessary by CCCFA; and

(g) with respect to any Series of Refunding Bonds, the amounts necessary to purchase, redeem and discharge Bonds being refunded, including the payment of the Purchase Price or the Redemption Price of such Bonds, any necessary deposits to the Debt Service Account, and all other costs and expenses incurred in connection with such Series of Refunding Bonds, including the costs and expenses described in (e) and (f) above.

*"CP Interest Term"* means, with respect to a Commercial Paper Interest Rate Period for a Series of Bonds, each period established in accordance with the Indenture during which a CP Interest Term Rate is in effect for the Bonds of such Series.

*"CP Interest Term Rate"* means, with respect to any Bond of a Series of Bonds in the Commercial Paper Interest Rate Period, an interest rate established periodically for each CP Interest Term in accordance with the Indenture.

*"Custodial Agreements"* means, collectively, the CCCFA Custodial Agreement and the Energy Supplier Custodial Agreement.

*"Custodian"* means The Bank of New York Mellon Trust Company, N.A., as Custodian under the Custodial Agreements and its successors and assigns.

*"Daily Interest Rate"* means, with respect to a Series of Bonds, the final daily interest rate for such Bonds determined by the Remarketing Agent by 11:00 a.m. New York City time pursuant to the Indenture.

*"Daily Interest Rate Period"* means, with respect to a Series of Bonds, each period during which a Daily Interest Rate is in effect for such Bonds.

*"Day-Ahead Average Price"* means, for any Assigned Energy after the Initial EPS Energy Periods, the weighted average Day-Ahead Market Price for each Month during the applicable EPS Energy Period, with such weighted average calculated in accordance with the Prepaid Energy Sales Agreement; 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.

*"Debt Service"* means with respect to any Outstanding Bonds, for any particular period of time, an amount equal to the sum of:

(a) all interest payable during such period on such Bonds, but excluding any interest that is to be paid from Bond proceeds on deposit in the Debt Service Account, plus

(b) the Principal Installments payable during such period on such Bonds, calculated on the assumption that, on the day of calculation, such Bonds cease to be Outstanding by reason of, but only by reason of, payment either upon maturity or application of any Sinking Fund Installments required by the Indenture;

*provided* that (i) the interest on any Bonds with a related Interest Rate Swap shall be calculated on the basis of the fixed interest rate payable by CCCFA under the Interest Rate Swap, and (ii) principal and interest due on the first day of a Fiscal Year shall be deemed to have been payable and paid on the last day of the immediately preceding Fiscal Year.

*"Debt Service Account"* means the Debt Service Account in the Debt Service Fund established under the Indenture.

*"Debt Service Fund"* means the Debt Service Fund established in Section 5.02.

*"Debt Service Fund Agreement"* means any debt service fund agreement, that is a Qualified Investment, among the Trustee, CCCFA and a provider, or between CCCFA and a provider and assigned to the Trustee, relating to amounts deposited in the Debt Service Account of the Debt Service Fund. The initial Debt Service Fund Agreement shall be the investment agreement (which may be in the form of an ISDA Master Agreement) with the Investment Agreement Provider with respect to the Debt Service Account, including the Capitalized Interest Subaccount therein, with a a term coterminous with the Initial Interest Rate Period, which is required to meet all of the criteria of a Qualified Investment under the Indenture and is expected to be bid out on the day of Bond pricing to qualified investment providers.

*"Debt Service Fund Agreement Guaranty"* means any unconditional guaranty, in favor of CCCFA and the Trustee, guarantying the obligations of the provider under any Debt Service Fund Agreement.

*"Defeasance Securities"* means (a) Government Obligations and (b) to the extent that such deposits or certificates of deposit are Qualified Investments, deposits in interest-bearing time deposits or certificates of deposit which shall not be subject to redemption or repayment prior to their maturity or due date other than at the option of the depositor or holder thereof or as to which an irrevocable notice of redemption or repayment, or irrevocable instructions have been given to call for redemption or repayment, of such time deposits or certificates of deposit on a specified redemption or repayment date has been given and such time deposits or certificates of deposit are not otherwise subject to redemption or repayment prior to such specified date other than at the option of the depositor or holder thereof, and which are fully secured by Government Obligations to the extent not insured by the Federal Deposit Insurance Corporation.

*"Delivery Period"* means the period commencing January 1, 2022 and ending December 31, 2051.

*"Delivery Point"* means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy, as set forth in the Prepaid Energy Sales Agreement.

*"Depository"* means any bank, trust company, national banking association, savings and loan association, savings bank or other banking association selected by CCCFA as a depository of moneys and securities held under the provisions of this Indenture, and may include the Trustee.

*"Dissemination Agent"* means that certain dissemination agent appointed by CCCFA, pursuant to the Continuing Disclosure Undertaking, and any successor Dissemination Agent appointed by CCCFA in accordance with the Continuing Disclosure Undertaking.

*"DTC"* means The Depository Trust Company, New York, New York, and its successors and assigns.

*"Early Termination Date"* means a date designated pursuant to the Prepaid Energy Sales Agreement upon which the Delivery Period will end and CCCFA's and the Energy Supplier's respective obligations to receive and deliver Energy under the Prepaid Energy Sales Agreement will terminate.

*"Early Termination Payment Date"* means the date payment of a Termination Payment is required to be made by the Energy Supplier under the Prepaid Energy Sales Agreement.

*"EBCE"* means East Bay Community Energy Authority, a joint powers authority organized pursuant to the Act.

*"Electronic Means"* means the following communication methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by a Responsible Officer of the Trustee as available for use in connection with its services hereunder.

*"EMMA"* means the Electronic Municipal Market Access system, the website currently maintained by the Municipal Securities Rulemaking Board and any successor municipal securities disclosure website approved by the Securities and Exchange Commission.

*"Energy"* means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.

*"Energy Delivery Point"* means the delivery point for Base Energy specified in the Prepaid Energy Sales Agreement.

*"Energy Remarketing Reserve Fund"* means the Energy Remarketing Reserve Fund in established under the Indenture.

*"Energy Supplier"* means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company.

*"Energy Supplier Commodity Swap"* means (i) the transaction confirmation entered into under the ISDA Master Agreement, dated as of the date of the Prepaid Energy Sales Agreement, by the Energy Supplier and the Swap Counterparty, and (ii) each replacement the Energy Supplier Swap entered into pursuant to the Prepaid Energy Sales Agreement.

*"Energy Supplier Custodial Agreement"* means that certain Custodial Agreement, dated as of the date of issuance of the Bonds, by and among the Swap Counterparty, the Energy Supplier and The Bank of New York Mellon Trust Company, N.A, as Trustee and custodian, as the same may be amended, modified or supplemented from time to time.

*"Energy Supplier Guaranty"* means the Morgan Stanley Guarantee, as defined in the Prepaid Energy Sales Agreement.

*"EPS"* means California's Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

*"EPS Compliant Energy"* means Energy that the Project Participant can contract for and purchase in compliance with EPS requirements that are applicable to the Project Participant.

*"EPS Energy Period"* means the Initial EPS Energy Periods and any subsequent EPS Energy Periods established by future assignments of power purchase agreements consistent with the Assignment Letter Agreements.

*"Extraordinary Expenses"* means extraordinary and nonrecurring expenses. Termination payments under the Commodity Swap shall not be considered an Extraordinary Expense.

*"Failed Remarketing"* means, (a) with respect to the Bonds on the Mandatory Purchase Date, a failure to either (i) pay the Purchase Price of the Bonds required to be purchased on such date or (ii) redeem such Bonds in whole on such date (including from any funds required from an Assignment Payment to the Assignment Payment Fund) or (b) with respect to the Bonds (i) if, on the last day of the current Reset Period prior to the Mandatory Purchase Date, CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of such existing Bonds, or (ii) if the conditions of (b)(i) above are satisfied, but the Purchase Price of the Bonds required to be purchased on the Mandatory Purchase Date is not delivered to the Trustee by noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date.

*"Favorable Opinion of Bond Counsel"* means an Opinion of Bond Counsel to the effect that an action proposed to be taken is not prohibited by the Indenture and will not, in and of itself, cause interest on the applicable Bonds to be included in gross income for purposes of federal income taxation.

*"Fiduciary"* or *"Fiduciaries"* means the Trustee, the Paying Agents, the Bond Registrar, the Calculation Agents, the Custodian, the tender agent or any or all of them, as may be appropriate.

*"Firm (LD)"* means, with respect to the obligation to deliver Energy, that CCCFA or the Energy Supplier shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure.

*"Fiscal Year"* means (a) the twelve-month period beginning on January 1 of each year and ending on and including the next December 31, or (b) such other twelve-month period established by CCCFA from time to time, upon Written Notice to the Trustee, as its fiscal year.

*"Fitch"* means Fitch Ratings, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by CCCFA in a Written Notice delivered to the Trustee.

*"Force Majeure"* means an event or circumstance which prevents the Project Participant, CCCFA or the Energy Supplier from performing its obligations under 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 CCCFA's or the Project Participant's markets; (ii) CCCFA's or the Project Participant's inability economically to use or resell any Energy purchased under the Prepaid Energy Sales Agreement or Power

Supply Contract, respectively; (iii) the loss or failure of the Energy Supplier's supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) the Energy Supplier's ability to sell the Energy at a higher price. No party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such party (or an upstream supplier with respect to the Energy Supplier or the Project Participant with respect to CCCFA) has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Energy Delivery Point and (b) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) to the extent that a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver, then such event shall be deemed to constitute Force Majeure in respect of the Energy Supplier; and (II) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to the Energy Supplier until the earlier of (A) the commencement of an "Assignment Period" under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

*"General Reserve Fund"* means the General Reserve Fund established in Section 5.02.

*"Government Agency"* means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

*"Government Obligations"* means:

(a) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, obligations unconditionally guaranteed as to principal and interest by the United States of America, and evidences of ownership interests in such direct or unconditionally guaranteed obligations; or

(b) Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which: (i) are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice; (ii) are rated in the two highest Rating Categories of S&P and Moody's; and (iii) are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in clause (a) above, which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable notice, as appropriate; or

(c) Any other bonds, notes or obligations of the United States of America or any agency or instrumentality thereof which, if deposited with the Trustee for the purpose described in the Indenture, will result in a rating on the Bonds which are deemed to have been paid pursuant to the Indenture that is in the same Rating Category of the obligations listed in subsection (a) above.

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

*"Hour"* means each 60-minute period commencing at 00:00 PPT on the first day of the Delivery Period. The term "Hourly" shall be construed accordingly.

*"Hourly Quantity"* means, with respect to each Delivery Hour during a Delivery Period, the quantity (in MWh) of Base Energy set forth in the Prepaid Energy Sales Agreement for the Month in which such Delivery Hour occurs, as updated from time to time in accordance with the Prepaid Energy Sales Agreement.

*"Indenture"* means this Trust Indenture as from time to time amended or supplemented by Supplemental Indentures in accordance with the terms hereof.

*"Index"* means the SIFMA Index or the SOFR Index, as applicable.

*"Index Rate"* means a SIFMA Index Rate or the SOFR Index Rate, as applicable.

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

*"Index Rate Reset Date"* means, with respect to a Series of Bonds bearing interest at an Index Rate, each date on which the applicable Index Rate is determined by the Calculation Agent based on the change in the applicable Index as of such date, which shall be the date or dates so specified in the applicable Index Rate Determination Certificate with respect to such Index Rate Period (including, by way of example and not limitation, Thursday of each week, the first Business Day of each calendar month or the first Business Day of a calendar quarter).

*"Initial Assignment Agreements"* means, for the Project Participant, a specific PPA between the Project Participant and MSCG, as seller.

*"Initial EPS Energy Periods"* means the period during which the Initial Assignment Agreements are in effect, which commence on first day of the initial Delivery Period and end on [_____], 20[__].

*"Initial Interest Rate Period"* means, with respect to the Series 2022 EBCE Bonds, the period from the date of issuance of the Bonds to and including [_____], 20[__]*.

"*Initial PPA Supplier*" means MSCG.

*"Internal Revenue Code"* means the Internal Revenue Code of 1986, as amended, including the applicable U.S. Treasury Regulations promulgated thereunder.

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

Rate Period, and (d) for each CP Interest Term for such Bond within a Commercial Paper Interest Rate Period, the first day thereof.

*"Interest Payment Date"* means (i) with respect to the Series 2022A-1 Bonds, each [_____] 1 and [_____] 1, commencing [_____] 1, 20[__]*, and (ii) with respect to the Series 2022A-2 Bonds and Series 2022A-3 Bonds, the first Business Day of each month, commencing with the first Business Day of [_____] 20[__]*.

*"Interest Rate Swap Payments"* means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to the Interest Rate Swap Counterparty by CCCFA.

*"Interest Rate Swap Receipts"* means, as of each scheduled payment date specified in the Interest Rate Swap, the amount, if any, payable to CCCFA by the Interest Rate Swap Counterparty.

*"Interest Rate Period"* means a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, a Term Rate Period or an Index Rate Period, each as defined in the Indenture. All Bonds of a Series shall at all times bear interest in the same Interest Rate Period, and all Interest Rate Periods for all Series of Bonds shall terminate on the first to occur of the day prior to (a) the next occurring Mandatory Purchase Date or (b) the Final Maturity Date.

*"Interest Rate Swap"* means the ISDA Master Agreement, the Schedule thereto and the Confirmation thereunder between the Issuer and the Interest Rate Swap Counterparty, and any replacement interest rate swap agreement permitted by the Indenture.

*"Interest Rate Swap Counterparty"* means MSES.

*"Investment Agreement Provider"* means _____.

*"Law"* means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the execution date of the Prepaid Energy Sales Agreement or at any time in the future.

*"Long-Term 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, the Energy Supplier or any successors thereto pursuant to any Assigned Rights and Obligations.

*"Mandatory Purchase Date"* means [_____] 1, 20[__]*.

*"Maturity Date"* means each date upon which principal of the Bonds is due, as set forth in the Indenture.

*"Maximum Lawful Rate"* means the maximum interest rate permitted by applicable law.

*"Maximum Rate"* means the lesser of 12% per annum and the Maximum Lawful Rate.

*"Minimum Discount"* has the meaning specified in the Power Supply Contract.

*"Month"* means a calendar month. The term *"Monthly"* shall be construed accordingly.

*"Monthly Quantity"* means, with respect to each Month of the Delivery Period, the quantity (in MWh) of Assigned Energy for such Month as set forth in the Prepaid Energy Sales Agreement, as updated from time to time in accordance therewith.

*"Moody's"* means Moody's Investors Service, Inc., its successors and assigns, and, if such corporation shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by CCCFA in a Written Notice delivered to the Trustee.

*"Morgan Stanley"* means Morgan Stanley, a Delaware corporation.

*"Morgan Stanley Guarantee"* means a guarantee of Morgan Stanley of the Energy Supplier's payment obligations under this Agreement in the form attached hereto as Exhibit E.

*"MSCG"* means Morgan Stanley Capital Group Inc., a Delaware corporation.

"*MWh*" means a megawatt-hour.

*"Net Participant Shortfall Amount"* means, for any Month in which the Project Participant fails to pay the full amount due under its Power Supply Contract in time for such amount to be credited to the Revenue Fund for application pursuant to the Indenture and the full amount due by such Project Participant is not otherwise paid by the Energy Supplier pursuant to the Receivables Purchase Provisions, an amount equal to the positive result (if any) of (i) such Project Participant's Payment Deficiency Index Baseline for such Month minus (ii) the greater of (a) such Project Participant's Payment Deficiency Fixed Baseline for such Month, and (b) the actual amount paid by such Project Participant for such Month, *provided* that if the foregoing does not result in a positive number, then no Net Participant Shortfall Amount will exist for such Project Participant for such Month.

"*NY Federal Reserve's Website*" means the website of the Federal Reserve Bank of New York currently at http://www.newyorkfed.org, or any successor website of the Federal Reserve Bank of New York.

*"Operating Expenses"* means, to the extent properly allocable to the Clean Energy Project, (a) CCCFA's expenses for operation of the Clean Energy Project, including all Rebate Payments, costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain any Commodity Swap; and payments required under the Prepaid Energy Sales Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of CCCFA's obligations under the Power Supply Contract; (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of this Indenture (other than Debt Service on the Bonds and deposits to the General Reserve Fund and the Energy Remarketing Reserve Fund, or any Cost of Acquisition) or by law or required to be incurred under or in connection with the performance of CCCFA's obligations under the Power Supply Contract; (c) fees payable by CCCFA with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses, and all other reasonable administrative and operating expenses of CCCFA, which are incurred by CCCFA with respect to the Bonds, this Indenture, or the Clean Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by CCCFA with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by CCCFA, including, without limitation, directors and officers liability insurance, allocable to the Clean Energy Project; provided that, for purposes of the transfers from the Revenue Fund described under the heading "*Flow of Funds*", Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs

described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund Commodity Swap Payments, litigation judgments and settlements and indemnification payments in connection with the payment of any litigation judgment or settlement, and Extraordinary Expenses are not Operating Expenses.

*"Operating Fund"* means the Operating Fund established pursuant to the Indenture.

*"Opinion of Bond Counsel"* means a written opinion of either Bond Counsel or Special Tax Counsel (or written opinions of both of them) addressed to CCCFA and delivered to the Trustee.

*"Opinion of Counsel"* means an opinion signed by an attorney or firm of attorneys (who may be counsel to CCCFA) selected by CCCFA.

*"Outstanding"* when used with reference to Bonds, means as of any date, Bonds theretofore or thereupon being authenticated and delivered under this Indenture except:

(a) Bonds cancelled (or portions thereof deemed to have been cancelled) by the Trustee at or prior to such date;

(b) Bonds (or portions of Bonds) for the payment or redemption of which moneys, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Indenture and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), *provided* that if such Bonds (or portions of Bonds) are to be redeemed, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice as provided in the Indenture;

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture;

(d) Bonds paid or deemed to have been paid as provided in the Indenture; and

(e) Bonds (or portions thereof) deemed to have been purchased pursuant to the provisions of any Supplemental Indenture in lieu of which other Bonds have been authenticated and delivered as provided in such Supplemental Indenture.

*"Paying Agent"* means the Trustee, its successors and assigns, and any other bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds, and its successor or successors hereafter appointed in the manner provided in this Indenture.

*"Payment Deficiency Fixed Baseline"* means, for any Month and any Project Participant, the amount such Project Participant would have been required to pay for such Month under its Power Supply Contract if the Contract Price for such Month had been determined using an Index Price (as defined under its Power Supply Contract) for such Month equal to the Fixed Price (as defined under the Commodity Swap) for such Month.

*"Payment Deficiency Index Baseline"* means, for any Month and any Project Participant, the amount required to be paid by such Project Participant for such Month under its Power Supply Contract.

*"PCC1 Product"* means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, the Energy Supplier or any successors thereto pursuant to any Assigned Rights and Obligations.

*"Person"* means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

*"Pledged Funds"* means (a) the Project Fund, (b) the Revenue Fund, (c) the Debt Service Fund, (d) the General Reserve Fund, (e) the Assignment Payment Fund and (f) the Commodity Swap Payment Fund, in each case including the Accounts in each of such Funds and in the case of the Commodity Swap Payment Fund, subject to the prior pledge thereof in favor of the Commodity Swap Counterparty.

*"Portfolio Content Category 1"* means any Renewable Energy Credit associated with the generation of electricity from an "Eligible Renewable Energy Resource" consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

*"Power Supply Contract"* means (a) the contract for the sale by CCCFA of Energy from or attributable to the Clean Energy Project to the Project Participant, as such contracts may be amended from time to time in accordance with the terms thereof and the Indenture, and (b) any other contract for the sale by CCCFA of Energy from or attributable to the Clean Energy Project entered into by a Person that becomes a Project Participant in accordance with the assignment and novation requirements set forth in the Indenture, as such contract may be amended from time to time in accordance with the terms thereof and the Indenture.

*"PPA Supplier"* means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the Assignment Letter Agreements.

*"PPT"* means Pacific Daylight Time when such time is applicable and otherwise means Pacific Standard Time.

"*Prepaid Clean Energy Project Administration Agreement*" means the Prepaid Clean Energy Project Administration Agreement by and between CCCFA and the Project Participant, as the same may be amended from time to time.

*"Principal Installment"* means, as of any date of calculation, (a) the principal amount of Bonds due on a certain future date for which no Sinking Fund Installments have been established, or (b) the unsatisfied balance of any Sinking Fund Installments due on a certain future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments.

*"Project Administration Fee"* means the annual fee payable by the Project Participant under its Power Supply Contract for the payment of Operating Expenses of CCCFA.

*"Project Fund"* means the Project Fund established under the Indenture.

*"Project Participant"* means (a) ECBE and (b) any other Public Agency that enters into a Power Supply Contract with CCCFA in accordance with the assignment and novation requirements set forth in the Indenture.

*"PSC Remarketing Election"* means, with respect to any Power Supply Contract, that the relevant Project Participant delivered a Remarketing Election Notice (as defined thereunder) for any Reset Period.

*"Public Agency"* means a state, a governmental or political subdivision of a state and a corporate instrumentality or public corporation of a state or a subdivision of a state, including without limitation any of their departments or agencies, counties, county boards of education, county superintendents of schools, cities, public corporations, public districts, public commissions or joint powers authorities.

*"Put Receivable"* has the meaning set forth in the Receivables Purchase Provisions.

*"Qualified Investments"* means any of the following investments, if and to the extent that the same are rated (or whose financial obligations to CCCFA receive credit support from an entity rated) at least at the credit rating of the Energy Supplier, or, if the Energy Supplier is not rated, the guarantor of the Energy Supplier (except for (c) below), and are at the time authorized for such purpose by law:

(a) Direct obligations of the United States government or any of its agencies;

(b) Obligations guaranteed as to principal and interest by the United States government or any of its agencies;

(c) Certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and CCCFA, and other evidences of deposit at state and federally chartered banks, savings and loan institutions or savings banks, including the Trustee or any of its affiliates (each having the highest short term rating by each Rating Agency then rating the Bonds) deposited and collateralized as required by law;

(d) Repurchase agreements entered into with the United States or its agencies or with any bank, broker dealer or other such entity, including the Trustee and its affiliates, so long as the obligation of the obligated party is secured by a perfected pledge of obligations that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(e) Guaranteed investment contracts, forward delivery agreements, interest rate exchange agreements or similar agreements providing for a specified rate of return over a specified time period; *provided, however,* that guaranteed investment contracts, forward delivery agreements or similar agreements shall meet the conditions set forth in the preamble to this definition of Qualified Investments;

(f) Direct general obligations of a state of the United States, or a political subdivision or instrumentality thereof, having general taxing powers;

(g) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by or on behalf of the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of principal of and interest on such obligations and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

(h) Money market funds registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, and having a rating in the highest Rating Category by each Rating Agency at the time of investment, including money market funds of the Trustee and funds for which the Trustee or its affiliates (i) provide investment or other management services and (ii) serve as investment manager, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (A) the Trustee or its affiliate receives or collects fees from such funds for services rendered, and (B) services performed

by the Trustee pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliate; or

(i) Any other investments permitted by applicable law for the investment of the funds of CCCFA and that meet the conditions set forth in the preamble to this definition of Qualified Investments;

provided, that CCCFA shall monitor, or shall cause to be monitored, ratings and shall determine whether any investment made is or continues to be a Qualified Investment, and the Trustee shall have no responsibility whatsoever for monitoring ratings or determining whether any investment is or continues to be a Qualified Investment.

*"Rating Agency"* means Fitch, Moody's or S&P, or any other rating agency so designated in a Supplemental Indenture that, at the time, rates the Bonds.

*"Rating Category"* means one or more of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such rating category or categories by a numerical modifier, a plus or minus, or otherwise.

*"Re-Pricing Agreement"* means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and the Energy Supplier.

*"Real-Time Market Price"* means The Five Minute Market (FMM) Locational Marginal Price for the Energy Delivery Point for each applicable interval as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules; provided that in no case shall the Real-Time Market Price hereunder be less than $0.00/MWh.

*"Redemption Account"* means the Redemption Account in the Debt Service Fund established in the Indenture.

*"Redemption Price"* means, with respect to any Bond, the amount payable upon redemption thereof pursuant to such Bond or this Indenture.

*"Renewable Energy Credit"* or *"REC"* has the meaning specified for "Renewable Energy Credit" in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

*"Reset Period"* means each "Reset Period" under the Re-Pricing Agreement.

*"Reset Period"* means Initial Reset Period or Reset Period, as the case may be, each as defined in the Re-Pricing Agreement.

*"Responsible Officer"* means, when used with respect to the Trustee, the Custodian or the Calculation Agent, as applicable, any managing director, president, vice president, senior associate, associate or other officer of the Trustee, the Custodian or the Calculation Agent, respectively, within its designated corporate trust office for delivery of notice specified in Section 12.11 (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at such office because of such person's knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

*"Revenue Fund"* means the Revenue Fund established under the Indenture.

*"Revenues"* means:

(a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by CCCFA from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by CCCFA under the Power Supply Contract and the Prepaid Energy Sales Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale and/or transmission of Energy or otherwise with respect to the Clean Energy Project;

(b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to this Indenture and paid or required to be paid into the Revenue Fund; and

(c) any Commodity Swap Receipts received by the Trustee on behalf of CCCFA.

*provided that,* the term "Revenues" shall not include: (u) any Termination Payment pursuant to the Prepaid Clean Energy Sales Agreement; (v) any amounts received from the Energy Supplier that are required to be deposited into the Energy Remarketing Reserve Fund; (w) any amounts paid by the Project Participant under a Prepaid Clean Energy Project Administration Agreement; (x) any Assignment Payment received from the Energy Supplier; (y) Interest Rate Swap Receipts; and (z) amounts paid by the Project Participant in respect of the Project Administration Fee.

*"S&P"* means S&P Global Ratings, a division of S&P Global Inc., its successors and assigns, and, if such entity shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by CCCFA in a Written Notice delivered to the Trustee.

*"Schedule"*, *"Scheduled"* or *"Scheduling"* means the actions of the Energy Supplier, CCCFA, the Project Participant and/or their designated representatives, including their respective Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

*"Scheduled Debt Service Deposits"* means the required monthly deposits to the Debt Service Account in the Debt Service Fund and the required cumulative deposits to the Debt Service Account in the Debt Service Fund in respect of the Debt Service coming due on the Bonds on each Bond Payment Date.

*"Securities Depository"* means DTC, or its nominee, and its successors and assigns.

"*Series 2022 EBCE Bonds*" means the Clean Energy Project Revenue Bonds, Series 2022A-1, Series 2022A-2 and Series 2022A-3.

*"SIFMA Index"* means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Refinity which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, such date being the same day the SIFMA Swap Index is expected to be

published or otherwise made available to the Calculation Agent. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by CCCFA in compliance with the Indenture.

*"SIFMA Index Rate"* means a per annum rate of interest equal to the sum of (a) the SIFMA Index then in effect, plus (b) the Applicable Spread.

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

*"Sinking Fund Installment"* means, for the Series 2022 EBCE Bonds, the amounts so designated in the Indenture.

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

"*SOFR Effective Date*" means each Business Day.

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

"*SOFR" or SOFR Index*" means the Secured Overnight Financing Rate reported on the NY Federal Reserve's Website, or reported by any successor to the Federal Reserve Bank of New York as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing SOFR as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date (for example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, [February 17, 2022], the Calculation Agent uses SOFR published on the SOFR Publish Date of Wednesday, [February 16, 2022], which is the SOFR Index for the SOFR Lookback Date of Monday, [February 14, 2022]). If SOFR is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date designated by CCCFA in writing (with notice to, and which is available to, the Calculation Agent) in compliance with the Indenture.

"*SOFR Index Rate*" means a daily variable interest rate equal to the sum of (1) the product of the SOFR and the Applicable Factor, plus (2) the Applicable Spread on each day of a SOFR Effective Period, not to exceed the Maximum Rate.

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

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

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

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

*"Special Tax Counsel"* means 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 CCCFA. Bond Counsel may serve as Special Tax Counsel.

*"Specified Discount"* means the amount specified in the Prepaid Energy Sales Agreement.

*"State"* means the State of California.

*"Supplemental Indenture"* means any indenture supplemental to or amendatory of this Indenture executed and delivered by CCCFA and the Trustee in accordance with the Indenture.

*"Tax Agreement"* means the Tax Certificate and Agreement of CCCFA with respect to the Bonds dated as of the initial issue date of the Bonds.

*"Termination Payment"* means, with respect to any Early Termination Payment Date, the amount specified in the Prepaid Energy Sales Agreement for the calendar month in which such Early Termination Payment Date occurs (as adjusted by any applicable Termination Payment Adjustment Amount) without any set-off or netting of amounts then due from CCCFA.

*"Trustee"* means The Bank of New York Mellon Trust Company, N.A. and its successor or successors and any other corporation or national banking association which may at any time be substituted in its place pursuant to the Indenture.

*"Trust Estate"* means (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Power Supply Contract, except for the right to receive the Project Administration Fee, (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment (e) all right, title and interest of CCCFA in, to and under the Receivables Purchase Provisions, including payments received from the Energy Supplier pursuant thereto, (f) all right, title and interest of CCCFA in, to and under the Energy Supplier Guaranty, (g) all right, title and interest of CCCFA in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, (h) all right, title and interest of CCCFA in, to and under any Debt Service Fund Agreement and Debt Service Fund Agreement Guaranty and (i) the Pledged Funds (which does not include the Administrative Fee Fund, the Energy Remarketing Reserve Fund and the Bond Purchase Fund, and excluding Rebate Payments held in any Fund or Account), including the investment income, if any, thereof subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

*"Weekly Interest Rate"* means, with respect to a Series of Bonds, a variable interest rate established for such Bonds in accordance with the Indenture.

*"Weekly Interest Rate Period"* means, with respect to a Series of Bonds, each period during which a Weekly Interest Rate is in effect for such Series of Bonds.

*"Written Certificate," "Written Direction," "Written Instrument," "Written Notice," "Written Request"* and *"Written Statement"* of CCCFA means in each case an instrument in writing signed on behalf of CCCFA by an Authorized Officer thereof. Any such instrument and any supporting opinions or certificates may, but need not, be combined in a single instrument with any other instrument, opinion or certificate, and the two or more so combined shall be read and construed so as to form a single instrument. Any such instrument may be based, insofar as it relates to legal, accounting or engineering matters, upon the opinion or certificate of counsel, consultants, accountants or engineers, unless the Authorized Officer signing such Written Certificate, Direction, Instrument, Notice, Request or Statement knows, or in the

exercise of reasonable care should know, that the opinion or certificate with respect to the matters upon which such Written Certificate, Direction, Instrument, Notice, Request or Statement may be based, as aforesaid, is erroneous. The same Authorized Officer, or the same counsel, consultant, accountant or engineer, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different Authorized Officers, counsel, consultants, accountants or engineers may certify to different facts, respectively. Every Written Certificate, Direction, Instrument Notice, Request or Statement of CCCFA, and every certificate or opinion of counsel, consultants, accountants or engineers provided for herein shall include:

(a) a statement that the person making such certificate, direction, instrument, notice, request, statement or opinion has read the pertinent provisions of this Indenture to which such certificate, direction, notice, request, statement or opinion relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate, direction, instrument, notice, request, statement or opinion is based;

(c) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; and

(d) with respect to any statement relating to compliance with any provision hereof, a statement whether or not, in the opinion of such person, such provision has been complied with.

## APPENDIX C

## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a brief summary of certain provisions of the Indenture pertaining to the Bonds. Such summary does not purport to be complete and reference is made to the Indenture for full and complete statements of all provisions of the Indenture.

[Orrick to provide prior to posting]

**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE UNDERTAKING**
FOR THE PURPOSE OF PROVIDING
CONTINUING DISCLOSURE INFORMATION
UNDER SECTION (b)(5) OF RULE 15c2-12

[closing date]

This Continuing Disclosure Undertaking (the "*Agreement*") is executed and delivered by California Community Choice Financing Authority ("*CCCFA*") in connection with the issuance of its $_____ Clean Energy Project Revenue Bonds Series 2022A-1 (Green Bonds) (Fixed Rate), $_____ Clean Energy Project Revenue Bonds Series 2022A-2 (Green Bonds) (SIFMA Index Rate), and $_____ Clean Energy Project Revenue Bonds Series 2022A-3 (Green Bonds) (SOFR Index Rate) (collectively, the "*Bonds*"). The Bonds are being issued pursuant to a Trust Indenture, dated as of _____ 1, 2022 (the "*Indenture*"), between CCCFA and U.S. Bank Trust Company, National Association, as trustee.

In consideration of the issuance of the Bonds by CCCFA and the purchase of such Bonds by the beneficial owners thereof, CCCFA covenants and agrees as follows:

1. Purpose of This Agreement. This Agreement is executed and delivered by CCCFA as of the date set forth below, for the benefit of the beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule (as defined below). CCCFA represents that it will be the only "obligated person" within the meaning of the Rule with respect to the Bonds at the time the Bonds are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after the issuance of the Bonds.

2. Definitions. (a) The terms set forth below shall have the following meanings in this Agreement, unless the context clearly otherwise requires.

"*Annual Financial Information*" means the financial information and operating data described in *Exhibit I*.

"*Annual Financial Information Disclosure*" means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

"*Audited Financial Statements*" means the audited financial statements of CCCFA prepared pursuant to the standards and as described in *Exhibit I*.

"*Commission*" means the Securities and Exchange Commission.

"*Dissemination Agent*" means any agent designated as such in writing by CCCFA and which has filed with CCCFA a written acceptance of such designation, and such agent's successors and assigns.

"*EMMA*" means the MSRB through its Electronic Municipal Market Access system for municipal securities disclosure or through any other electronic format or system prescribed by the MSRB for purposes of the Rule.

"*Energy Supplier*" means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company and its successors and permitted assigns.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Final Official Statement*" means the Final Official Statement dated _____, 2022, relating to the Bonds.

"*Financial Obligation*" means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of an obligation or instrument described in clause (a) or (b) of this definition; provided however, the term Financial Obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

"*Monthly Ledger Report*" means the copies of the ledgers maintained by the Energy Supplier pursuant to Exhibit C of the Prepaid Energy Sales Agreement and delivered each month to CCCFA pursuant to Section 9(b)(i) of such Exhibit.

"*MSRB*" means the Municipal Securities Rulemaking Board.

"*Non-Private Business Sales Ledger*" and "*Private Business Sales Ledger*" have the meanings assigned to such terms in Exhibit C to the Prepaid Energy Sales Agreement.

"*Participating Underwriter*" means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Bonds.

"*Prepaid Energy Sales Agreement*" means the Prepaid Energy Sales Agreement dated as of _____, 2022 between the Energy Supplier and CCCFA.

"*Remarketing Non-Default Termination Event*" has the meaning assigned to such term in Exhibit C to the Prepaid Energy Sales Agreement.

"*Reportable Event*" means the occurrence of any of the Events with respect to the Bonds set forth in *Exhibit II*.

"*Reportable Events Disclosure*" means dissemination of a notice of a Reportable Event as set forth in Section 5.

"*Rule*" means Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

"*Undertaking*" means the obligations of CCCFA pursuant to Sections 4 and 5.

(b) Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

3. CUSIP Numbers. The CUSIP Numbers of the Bonds are as follows:

| MATURITY (_____ 1) | AMOUNT | CUSIP NUMBER |
|---|---|---|

CCCFA will include the CUSIP Numbers (or applicable CUSIP Number) in all disclosure described in Sections 4 and 5 of this Agreement.

4. Annual Financial Information Disclosure. Subject to Section 9 of this Agreement, CCCFA hereby covenants that it will disseminate or cause to be disseminated on its behalf its Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth in *Exhibit I*) to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information and by such time so that such entities receive the information by the dates specified. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, CCCFA will disseminate a statement to such effect as part of the Annual Financial Information for the year in which such event first occurs.

If any amendment or waiver is made to this Agreement, the Annual Financial Information for the year in which such amendment is made (or in any notice or supplement provided to EMMA) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. Reportable Events Disclosure. Subject to Section 8 of this Agreement, CCCFA hereby covenants that it will disseminate in a timely manner (not in excess of ten business days after the occurrence of the Reportable Event) Reportable Events Disclosure to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information. References to "material" in *Exhibit II* refer to materiality as it is interpreted under the Exchange Act. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Bonds or defeasance of any Bonds need not be given under this Agreement any earlier than the notice (if any) of such redemption or defeasance is given to the Bondholders pursuant to the Indenture.

6. Consequences of Failure of CCCFA to Provide Information. CCCFA shall give notice in a timely manner to EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of CCCFA to comply with any provision of this Agreement, the beneficial owner of any Bond may seek mandamus or specific performance by court order, to cause CCCFA to comply with its obligations under this Agreement. The beneficial owners of 25% or more in principal amount of the Bonds outstanding may challenge the adequacy of the information provided under this Agreement and seek specific performance by court order to cause CCCFA to provide the information as required by this Agreement. A default under this Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Agreement in the event of any failure of CCCFA to comply with this Agreement shall be an action to compel performance.

7. Amendments; Waiver. Notwithstanding any other provision of this Agreement, CCCFA by resolution authorizing such amendment or waiver, may amend this Agreement, and any provision of this Agreement may be waived, if:

(a) (i) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, including without limitation pursuant to a "no-action" letter issued by the Commission, change in law, or change in the identity, nature, or status of CCCFA, or type of business conducted; or

(ii) This Agreement, as amended, or the provision, as waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(b) The amendment or waiver does not materially impair the interests of the beneficial owners of the Bonds, as determined either by parties unaffiliated with CCCFA (such as the Trustee), or by approving vote of Bondholders pursuant to the terms of the Indenture at the time of the amendment.

In the event that the Commission, the MSRB or other regulatory authority shall approve or require Annual Financial Information Disclosure or Reportable Events Disclosure to be made to a central post office, governmental agency or similar entity other than EMMA or in lieu of EMMA, CCCFA shall, if required, make such dissemination to such central post office, governmental agency or similar entity without the necessity of amending this Agreement.

8. Termination of Undertaking. The Undertaking of CCCFA shall be terminated hereunder if CCCFA no longer has any legal liability for any obligation on or relating to repayment of the Bonds under the Indenture. CCCFA shall give notice to EMMA in a timely manner if this Section is applicable.

9. Dissemination Agent. CCCFA may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Agreement, and may discharge any such Dissemination Agent with or without appointing a successor Dissemination Agent.

10. Additional Information. Nothing in this Agreement shall be deemed to prevent CCCFA from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Reportable Event, in addition to that which is required by this Agreement. If CCCFA chooses to include any information from any document or notice of occurrence of

a Reportable Event in addition to that which is specifically required by this Agreement, CCCFA shall have no obligation under this Agreement to update such information or include it in any future disclosure or notice of occurrence of a Reportable Event. If the name of CCCFA is changed, CCCFA shall disseminate such information to EMMA.

11. Beneficiaries. This Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Agreement shall inure solely to the benefit of CCCFA, the Dissemination Agent, if any, and the beneficial owners of the Bonds, and shall create no rights in any other person or entity.

12. Recordkeeping. CCCFA shall maintain records of all Annual Financial Information Disclosure and Reportable Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. Assignment. CCCFA shall not transfer its obligations under the Indenture unless the transferee agrees to assume all obligations of CCCFA under this Agreement or to execute an Undertaking under the Rule.

14. Governing Law. This Agreement shall be governed by the laws of the State of California.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By _____
Its

EXHIBIT I

ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

"*Annual Financial Information*" means financial information and operating data with respect to the Clean Energy Project, including:

(a) with respect to the Project Participant updated information under the headings "Customers – General," "Customers – Customer Opt-Out Rate and Customer Retention," "Service Rates – Current and Historical Rate Information," "Sources of Energy – Energy Purchases," "Financial Information – Results of Operations," "Financial Information – Assets, Liabilities, Deferred Inflows or Resources and Net Position" and "Financial Information – Other Liquidity Sources" set forth APPENDIX A to the Official Statement;

(b) the quantities of Energy from the Clean Energy Project sold by CCCFA, whether to the Project Participant or others; and

(c) such other information and data as CCCFA may deem necessary in order to comply with the requirements of the Rule.

"*Audited Financial Statements*" means the audited financial statements of CCCFA, in each case for the most recent fiscal year (commencing with the fiscal year ended December 31, 2021), in each case prepared in accordance with generally accepted accounting principles as promulgated to comply with governmental entities from time to time (or such other accounting principles as may be applicable to CCCFA, as the case may be, in the future pursuant to applicable law).

All or a portion of the Annual Financial Information and the Audited Financial Statements set forth above may be included by reference to other documents which have been submitted to EMMA or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available on EMMA. The final official statement need not be available from the Commission. CCCFA shall clearly identify each such item of information included by reference.

Annual Financial Information with respect to the Project Participant will be submitted to EMMA by 200 days after end of the Project Participant's fiscal year (being June 30 for East Bay Community Energy Authority).

Annual Financial Information with respect to CCCFA (*i.e.,* the information described in clauses (b) and (c) of the definition of Annual Financial Information) will be submitted to EMMA by 200 days after end of CCCFA's fiscal year.

Audited Financial Statements as described above should be filed at the same times as the Annual Financial Information. If Audited Financial Statements are not available when such Annual Financial Information is filed, unaudited financial statements shall be included. Audited Financial Statements will be submitted to EMMA no later than 30 days after availability to CCCFA.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Agreement, CCCFA will disseminate a notice of such change as required by Section 4.

EXHIBIT II

EVENTS WITH RESPECT TO THE BONDS
FOR WHICH REPORTABLE EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies

2. Non-payment related defaults, if material

3. Unscheduled draws on debt service reserves reflecting financial difficulties

4. Unscheduled draws on credit enhancements reflecting financial difficulties

5. Substitution of credit or liquidity providers, or their failure to perform

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security

7. Modifications to the rights of security holders, if material

8. Bond calls, if material, and tender offers

9. Defeasances

10. Release, substitution or sale of property securing repayment of the securities, if material

11. Rating changes

12. Bankruptcy, insolvency, receivership or similar event of the obligated person*

13. The consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material

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* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

15. Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties

17. The receipt by CCCFA of a Monthly Ledger Report that includes a credit to any Non-Private Business Sales Ledger or any Private Business Sales Ledger that has not been reversed within twelve months of the date of such credit

18. The receipt by CCCFA of a Monthly Ledger Report that shows that a Remarketing Non-Default Termination Event has occurred

**APPENDIX E**

**FORM OF OPINION OF BOND COUNSEL**

[Orrick to provide prior to posting]

**APPENDIX F**

KESTREL VERIFIERS™ **FORM OF SECOND PARTY OPINION REGARDING GREEN BOND DESIGNATION**

# SECOND PARTY OPINION
## EXECUTIVE SUMMARY

### ISSUER
California Community Choice Financing Authority

### OPINION ON
Clean Energy Project Revenue Bonds Series 2022A-1 (Green Bonds)
Clean Energy Project Revenue Bonds Series 2022A-2 (Green Bonds)
Clean Energy Project Revenue Bonds Series 2022A-3 (Green Bonds)

### GREEN STANDARD AND CATEGORY
The Green Bond Principles

- Renewable Energy

### EVALUATION DATE
[_____], 2022

### SUMMARY
Kestrel Verifiers is of the opinion that the Clean Energy Project Revenue Bonds, Series 2022 EBCE Bonds (Green Bonds) conform with the four core components of the Green Bond Principles 2021 as follows:

- **Use of Proceeds**
  California Community Choice Financing Authority (the "Issuer" or "CCCFA") intends to issue Clean Energy Project Revenue Bonds Series 2022A-1 (Green Bonds), Series 2022A-2 (Green Bonds) and Series 2022A-2 (Green Bonds) ("Bonds") to finance prepayment for 30 years of renewable and carbon-free electricity to benefit East Bay Community Energy ("EBCE"). Proceeds will also finance capitalized interest, and costs of issuance.

- **Process for Project Evaluation and Selection**
  CCCFA and EBCE have adopted planning documents and procedures that advance the expansion of renewable and carbon-free energy generation. Decision-making regarding bond-financed activities is overseen by CCCFA's Board of Directors and the community choice aggregators' Boards of Directors. EBCE has adopted Integrated Resource Plans that outline long-term planning priorities and strategies.

- **Management of Proceeds**
  Bond proceeds shall be fully allocated to prepay contracts for renewable and carbon-free energy. A portion of proceeds will also be used to pay capitalized interest, and pay costs of issuance. Temporary investment of these funds is limited to permittable, conservative investments pursuant to the Indenture with respect to the Bonds.

- **Reporting**
  EBCE's Integrated Resource Plans provide ongoing transparency and updates on the progress of community choice aggregators ("CCAs") meeting statewide requirements for greenhouse gas emission reduction targets within the electricity sector. As required by the California Public Utilities Commission, CCAs also report annually on the power content and greenhouse gas emissions associated with energy supplied to customers. CCCFA will also post continuing financial disclosures to the Municipal Securities Rulemaking Board ("MSRB") annually through the Electronic Municipal Market Access ("EMMA") system.


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- **Impact and Alignment with United Nation Sustainable Development Goals**
  The Bonds support UN Sustainable Development Goals 7: Affordable and Clean Energy, 9: Industry, Innovation, and Infrastructure, 11: Sustainable Cities and Communities, and 13: Climate Action by financing renewable and carbon -free power purchase agreements as part of the Clean Energy Project.

KESTREL VERIFIERS™

# Second Party Opinion

| | |
|---|---|
| **Issuer:** | **California Community Choice Financing Authority** |
| **Issue Description:** | Clean Energy Project Revenue Bonds Series 2022A-1 (Green Bonds) |
| | Clean Energy Project Revenue Bonds Series 2022A-2 (Green Bonds) |
| | Clean Energy Project Revenue Bonds Series 2022A-3 (Green Bonds) |
| **Project:** | Clean Energy Project (East Bay Community Energy) |
| **Green Standard:** | Green Bond Principles |
| **Green Category:** | Renewable Energy |
| **Par:** | $1,000,000,000* |
| **Evaluation Date:** | [_____], 2022 |

*Preliminary, subject to change

## GREEN BONDS DESIGNATION

Kestrel Verifiers, an Approved Verifier accredited by the Climate Bonds Initiative, conducted an independent external review of these bonds to evaluate conformance with the Green Bond Principles (June 2021) established by the International Capital Market Association.

This Second Party Opinion reflects our review of the uses and allocation of proceeds and oversight and conformance of the bonds with the Green Bond Principles. In our opinion, the Clean Energy Project Revenue Bonds Series 2022A-1 (Green Bonds), Series 2022A-2 (Green Bonds) and Series 2022A-3 (Green Bonds) ("Bonds") to be issued by the conduit entity California Community Choice Financing Agency for the benefit of one community choice aggregator, East Bay Community Energy, are aligned with the four core components of the Green Bond Principles and qualify for Green Bonds designation.

## ABOUT THE ISSUER

The Issuer, California Community Choice Financing Agency ("CCCFA"), is a joint powers authority established in 2021 and is comprised of community choice aggregators including its founding members: East Bay Community Energy, Silicon Valley Clean Energy, Marin Clean Energy, and Central Coast Community Energy. CCCFA was incorporated and organized for a variety of purposes, including to issue tax-advantaged bonds to finance energy prepayments of clean energy. This innovative strategy can help community choice aggregators remain cost-competitive with other utilities.

## ABOUT THE BORROWER

East Bay Community Energy is the beneficiary of the Bonds issued by CCCFA. It is a community choice aggregator and operates as a joint powers authority and nonprofit public agency. Community choice aggregators are locally controlled not-for-profit energy providers. The primary purpose is to provide communities with more clean energy options, meet climate action goals, ensure local transparency and accountability, and drive economic development. As of 2021, ten states have authorized community choice aggregators.

East Bay Community Energy

East Bay Community Energy ("EBCE") was formed in 2016 with the purpose of implementing the region's community choice aggregation program. EBCE is governed by a Board of Directors with one representative from each participating jurisdiction and includes a non-voting member from the Community Advisory Committee. The Community Advisory Committee serves as a liaison between local community stakeholders and the Board.

The primary objectives of EBCE are to provide lower-cost electric service than PG&E (the region's primary electricity provider); reduce greenhouse gas emissions ("GHGs") resulting from electricity use within Alameda and San Joaquin Counties; stimulate local renewable energy development; promote energy efficiency and demand reduction programs; drive greater investments into electrification of transportation and building infrastructure, prioritize equitable energy programs, and sustain long-term rate stability for residents and businesses through local control.

Currently, EBCE provides electricity for approximately 1,700,000 residents and business in 15 communities in the County of Alameda and San Joaquin County. Customers may choose from three service options:

- Renewable 100: 100% renewable California solar and wind power
- Brilliant 100: Carbon-free plan, which is a mix of eligible renewable and hydropower[1]
- Bright Choice: Minimum 41% renewable in 2021[2]

EBCE recently made a commitment to 100% clean energy by 2030, while continuing to emphasize investment in their community and local programs. The first few years of service have significantly reduced electricity bills for customers compared to what they would have paid on bills to PG&E. EBCE budgets annually to support local energy programs and regularly invests in local programs related to STEM, arts, athletics, and community needs.

## ALIGNMENT TO GREEN STANDARDS

*Green Bonds are any type of bond instrument where the proceeds will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects and which are aligned with the four core components of the Green Bond Principles (International Capital Market Association definition).*

### Use of Proceeds

The Bonds will be used to finance prepayment of renewable and carbon-free electricity for the benefit of EBCE (the "CCA"). Proceeds will also finance capitalized interest and costs of issuance. The acquisition for the supply of approximately 30 years of energy for the CCA is referred to as the Clean Energy Project. The Clean Energy Project is an eligible project as defined by the Green Bond Principles in the project category of *Renewable Energy*.

Green Standard

The Green Bond Principles

Eligible Project Category:
- Renewable Energy

Transaction Structure

The structure of the transaction allows the CCA to use tax-exempt financing opportunities to reduce the cost of energy procurement for participating customers. The Bonds present a model for the 24 other CCAs in California to follow and to further expand access to low-cost renewables for both residential and commercial customers. Further details on the financing structure are discussed in the Official Statement.

The Clean Energy Project

The Bonds will finance the procurement of long-term electricity supply at competitive prices for EBCE over two time periods: years 1-3 and years 4-30. The anticipated composition of power supplies acquired with proceeds of the Bonds is available in Table 1. Existing or prospective Power Purchase Agreements ("PPAs") may be assigned to the prepayment and multiple PPAs may fulfill the agreements to supply energy over the defined terms. During the initial 1-3 year period, and at the time of bond pricing, the CCA will have entered into PPAs which will be assigned into the prepayment. In the case of EBCE, the PPA will deliver a fixed

[1] All customers will transition off Brilliant 100 service by January 2022.
[2] Ramping up to 100% greenhouse gas free by 2030.

annual quantity of energy supplied by specified wind and/or hydroelectric sources. Under the terms of the PPAs, during the Year 1-3 period, the CCA is procuring annual quantities that are 100% carbon-free (but in neither instance are the CCAs procuring Renewable Energy Credits (RECs)).

Table 1. Anticipated overall power content of PPAs under the Clean Energy Project

| Bond-Financed Activity | Type | Term |
|---|---|---|
| Prepay for East Bay Community Energy | Wind and/or Hydroelectric | 1 – 3 years |
| Prepay for East Bay Community Energy | Renewable and/or carbon-free PPAs | 4 – 30 years |

The CCA has committed to achieving a 100% renewable portfolio in 30 years and the proceeds will be allocated in alignment with these commitments. Both the Series 2022A-1 Bonds, the Series 2022A-2 Bonds and Series 2022A-3 Bonds will finance the Clean Energy Project.

In the event that PPAs are not able to be assigned to the prepayment in the future (during all or part of the Year 4-30 period), the CCA will likely continue to purchase power under their existing procurement arrangement outside of the prepayment transaction) and may continue to receive the benefit of the discount from the prepayment under contractual remediation provisions.

**Process for Project Evaluation and Selection**

The CCA (EBCE) has adopted planning documents that ensure bond-financed activities align with its mission and guide decisions around PPAs assigned to prepayment contracts for the Bonds. EBCE has adopted *Integrated Resource Plans* (IRPs) which are primary planning documents that outline long-term priorities and strategies. IRP's are mandated under SB 350 and are required every two years. IRPs are critical to energy resource selection and are integral to the evaluation and selection of PPAs to be associated with the Bonds. All California Public Utilities Commission jurisdictional load serving entities are required to submit an IRP to the CPUC for approval based on standardized methodologies. IRPs establish policy goals and evaluate resource choices to ensure CCAs are meeting statewide requirements for greenhouse gas emission reduction targets within the power sector and grid reliability mandates. In addition to IRPs, the CCA has additional priorities and processes established to fulfill its respective mission and provide oversight on the activities financed by the Bonds.

East Bay Community Energy

Bond proceeds support East Bay Community Energy's commitment to innovative renewable energy projects and providing clean energy electricity options to local service areas. As discussed above, EBCE's *Integrated Resource Plan (2020)* is the adopted plan that guides EBCE's process for project selection and evaluation.[3] In line with the analysis and results in the *Integrated Resource Plan (2020)*, EBCE's 15-member Board of Directors committed to a 100% clean, carbon-free energy goal by 2030 and pursue a diverse energy portfolio consisting of solar energy, wind energy, hydropower, and more. EBCE holds regular Community Advisory Committee meetings that are open to the public. The Community Advisory Committee provides input on economic, environmental, and social impacts of EBCE projects on customers and communities. EBCE utilizes an internal scoring rubric, which considers financial risk and energy pricing benefits, project development risk, and local workforce development to guide decision-making around PPA authorization. EBCE's Board ultimately approves PPAs.

California Community Choice Financing Authority

As a conduit entity, CCCFA holds the rights over financing and refinancing of the energy prepayment through tax-advantaged bonds and is not responsible for selecting or negotiating PPAs for specific members such as EBCE. CCCFA holds responsibility for this financing through the California Joint Exercise of Powers Act and

[3] East Bay Community Energy 2020 Integrated Resource Plan (Public Version), https://res.cloudinary.com/diactiwk7/image/upload/fl_sanitize,q_auto/r2005003-public-verison-ebce-2020-irp-9-1-2020.pdf

is obligated to confirm eligibility of financed activities with an authorized list which includes purchase of energy with environmental attributes, facility improvements, provisions of working capital, and other renewable programs. Limits to the allowable uses of proceeds provide additional legal assurance that proceeds will be used for activities with positive environmental impacts. CCCFA is governed by a Board of Directors who have expertise in public utilities finance, clean energy policy, and sustainable energy projects, and are primarily responsible for CCCFA's general management, business affairs, project oversight.

### Management of Proceeds

Proceeds from the Bonds will solely be allocated to finance prepayment for renewable energy and carbon-free energy, pay capitalized interest, and pay costs of issuance. Upon closing, CCCFA will immediately acquire a 30-year supply of renewable and carbon-free electricity through the energy supplier, Morgan Stanley Energy Structuring, L.L.C., for the sole benefit of EBCE. While proceeds delivered to Morgan Stanley Energy Structuring, L.L.C. will be comingled with other funds before payment to energy suppliers, the total amount is required to be paid to acquire eligible green energy supplies. In Kestrel's view, this management of proceeds through a third party retains alignment with market standards and enables the expansion of renewable and carbon-free energy contracts. Ultimately, this transaction structure enables the financing of the acquisition of renewable and carbon-free electricity and is an exemplary, cost-saving model for CCAs to follow.

### Reporting

CCCFA will submit annual continuing disclosures to the Municipal Securities Rulemaking Board ("MSRB") through the Electronic Municipal Market Access ("EMMA") system so long as the Bonds are outstanding.

The CCAs intend to provide voluntary disclosures on the new and existing PPAs being assigned to the prepayment contracts, and provide information on the associated greenhouse gas emission reductions in accordance with calculation methodologies specified by the California Public Utilities Commission or other regulations.

In California, CCAs such as EBCE, are considered Electric Load-Serving Entities and are therefore subject to specific reporting requirements, renewable portfolio standards, and reliability standards set forth by the California Public Utilities Commission and the California Energy Commission. EBCE regularly submits *Integrated Resource Plans* to the California Public Utilities Commission, which provide updates on the progress of CCAs toward meeting statewide requirements for greenhouse gas emission reduction targets within the electricity sector. As required by California Public Utilities Commission, the CCAs also report annually on the power content, or power mix, of the energy supplied to customers. Beginning in 2021, power content reporting will also include greenhouse gas emissions. These reports are available on California Energy Commission's website: https://www.energy.ca.gov/programs-and-topics/programs/power-source-disclosure/power-content-label/annual-power-content-0

## IMPACT AND ALIGNMENT WITH UN SDGS

Bond-financed activities support and advance the vision of the UN SDGs. A comprehensive list of targets and background on UN SDGs 7, 9, 11, and 13 are available on the United Nations website: www.un.org/sustainabledevelopment

The Clean Energy Project financed by the Bonds, including prepayment of clean energy, support Targets 7.1, 7.2, 9.4, and 11.6. The prepayment of renewable electricity for EBCE customers increases renewable energy supply and thus aligns with Targets 7.1, 7.2, and 9.1. The Clean Energy Project features renewable energy alternatives to avoid greenhouse gas emissions, which advances Target 13.2. CCCFA supports Target 9.4 by financing carbon-free energy to reduce greenhouse gas emissions and create clean energy production. The increased use of carbon-free and renewable energy helps improve air quality and thus supports Target 11.6. Target definitions are included in Appendix A.


**Affordable and Clean Energy (Target 7.1, 7.2)**

Possible Indicators

- Renewable energy share in the total final energy consumption
- Renewable energy produced
- Metric tons of greenhouse gas emissions avoided
- Number of people with access to renewable and carbon-free energy services


**Industry, Innovation, and Infrastructure (Target 9.1, 9.4)**

Possible Indicators

- $CO_2$ emission per unit of value added
- Reduction in fossil fuel use as a result of bond projects
- Total renewable and carbon-free energy produced and distributed


**Sustainable Cities and Communities (Target 11.6)**

Possible Indicators

- Annual mean levels of fine particulate matter in cities reduced
- Metric tons of greenhouse gas emissions avoided


**Climate Action (Target 13.2)**

Possible Indicators

- Metric tons of greenhouse gas emissions avoided

## CONCLUSION

Based on our independent external review, the Bonds conform, in all material respects, with the Green Bond Principles (2021) and are in complete alignment with the Renewable Energy eligible project category. The Clean Energy Project is uniquely positioned to expand affordable access to renewable and carbon-free energy through community choice aggregators in California.



## ABOUT KESTREL VERIFIERS

KESTREL VERIFIERS™

CLIMATE BONDS STANDARD APPROVED VERIFIER

For 20 years Kestrel has been a trusted consultant in sustainable finance. Kestrel Verifiers, a division of Kestrel 360, Inc. is a Climate Bonds Initiative Approved Verifier qualified to verify transactions in all asset classes worldwide. Kestrel is a US-based certified Women's Business Enterprise.

For more information, visit www.kestrelverifiers.com

## DISCLAIMER

This Opinion aims to explain how and why the discussed financing meets the ICMA Green Bond Principles based on the information which was available to us during the time of this engagement (August 2021) only. By providing this Opinion, Kestrel Verifiers is not certifying the materiality of the projects financed by the Green Bonds. It was beyond Kestrel Verifiers' scope of work to review for regulatory compliance and no surveys or site visits were conducted. Furthermore, we are not responsible for surveillance on the project or use of proceeds. Kestrel Verifiers relied on information provided by CCCFA and/or the CCAs and publicly available information. The Opinion delivered by Kestrel Verifiers does not address financial performance of the Green Bonds or the effectiveness of allocation of its proceeds. This Opinion does not make any assessment of the creditworthiness of CCCFA and/or the CCAs or the ability to pay principal and interest when due. This is not a recommendation to buy, sell or hold the Bonds. Kestrel Verifiers is not liable for consequences when third parties use this Opinion either to make investment decisions or to undertake any other business transactions. This Opinion may not be altered without the written consent of Kestrel Verifiers.

Kestrel Verifiers reserves the right to revoke or withdraw this Opinion at any time. Kestrel Verifiers certifies that there is no affiliation, involvement, financial or non-financial interest in CCCFA, CCAs, or the projects discussed. Language in the offering disclosure supersedes any language included in this Second Party Opinion.

Use of the United Nations Sustainable Development Goal (SDG) logo and icons does not imply United Nations endorsement of the products, services or bond-financed activities. The logo and icons are not being used for promotion or financial gain. Rather, use of the logo and icons is primarily illustrative, to communicate SDG-related activities.

KESTREL VERIFIERS™

# Appendix A.
## UN SDG TARGET DEFINITIONS

Target 7.1
By 2030, ensure universal access to affordable, reliable and modern energy services

Target 7.2
By 2030 increase the share of renewable energy in the global energy mix

Target 9.1
Develop quality, reliable, sustainable and resilient infrastructure, including regional and trans-border infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all

Target 9.4
By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

Target 11.6
By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management

Target 13.2
Integrate climate change measures into national policies, strategies and planning

## APPENDIX G

## BOOK-ENTRY SYSTEM

The Depository Trust Company (*"DTC"*), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity of the Bonds exceeds $500 million, one certificate will be issued with respect to each $500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such maturity.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants (*"Direct Participants"*) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (*"DTCC"*). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (*"Indirect Participants"*). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (*"Beneficial Owner"*) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested

by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership.

DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to CCCFA of securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts such Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and payments of principal and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from CCCFA or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, CCCFA or the Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of CCCFA or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to CCCFA or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

CCCFA may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates are required to be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that CCCFA believes to be reliable, but CCCFA takes no responsibility for the accuracy thereof.

## APPENDIX H

## REDEMPTION PRICE OF THE BONDS

The following table sets forth the Redemption Price of the Bonds (being the Amortized Value of the Series 2022A-1 Bonds and 100% of the principal amount of the Index Rate Bonds, but excluding accrued interest which is payable from the amounts required to be on deposit in the Debt Service Account) upon an extraordinary mandatory redemption following an Early Termination Payment Date under the Prepaid Energy Sales Agreement, as of the redemption dates shown below during the Initial Interest Rate Period.

| REDEMPTION DATE | REDEMPTION PRICE |
|---|---|

## APPENDIX I

## SCHEDULE OF TERMINATION PAYMENTS

The Termination Payment for any Early Termination Payment Date will be the amount set forth on the attached table in the column corresponding to the month in which the Early Termination Date occurs, plus the product of (a) the Contract Quantity for such Month, minus the quantity of Energy required to have been delivered in such Month prior to the effectiveness of such Early Termination Date, multiplied by (b) the result of (i) the applicable Fixed Price(s) for Energy (as defined in the CCCFA Commodity Swap), minus (ii) the Specified Discount then in effect.

| MONTH OF EARLY TERMINATION | TERMINATION PAYMENT |
|---|---|

# APPENDIX J

## ADDITIONAL INFORMATION REGARDING SOFR INDEX RATE BONDS

### SECURED OVERNIGHT FINANCING RATE (SOFR) OVERVIEW

According to the NY Federal Reserve's Website, in 2014, the Federal Reserve convened the Alternative Reference Rates Committee (ARRC) and tasked the group with identifying an alternative to U.S. dollar LIBOR that was a robust, IOSCO compliant, transaction based derived from a deep and liquid market. In 2017, the ARRC fulfilled this mandate by selecting the Secured Overnight Financing Rate, or "SOFR." SOFR is based on overnight transactions in the U.S. dollar Treasury repo market, the largest rates market at given maturity in the world. National working groups in other jurisdictions have similarly identified overnight nearly risk free rates (RFRs) like SOFR as their preferred alternatives.

SOFR has a number of characteristics that LIBOR and other similar rates based on wholesale term unsecured funding markets do not, including (a) SOFR is a rate produced by the Federal Reserve Bank of New York for the public good, (b) SOFR is derived from an active and well defined market with sufficient depth to make it extraordinarily difficult to ever manipulate or influence, (c) SOFR is produced in a transparent, direct manner and is based on observable transactions, rather than being dependent on estimates, like LIBOR, or derived through models, and (d) SOFR is derived from a market that was able to weather the global financial crisis and that the ARRC credibly believes will remain active enough in order that it can reliability be produced in a wide range of market conditions.

SOFR is published on a daily basis by the Federal Reserve Bank of New York in cooperation with the Office of Financial Research, and reflects the cost of overnight borrowing and lending in the U.S. Treasury repo market. Borrowing in this market reflects the best measure of the private sector risk free rate, because it is collateralized with U.S. Treasury securities, which the lender returns once the borrower returns the cash borrowed. SOFR is a fully transaction based rate and has the widest coverage of any Treasury repo rate available, incorporating tri party repo data, the Fixed Income Clearing Corporation's (FICC) GCF Repo data, and the bilateral Treasury repo transactions cleared for FICC. Throughout 2020, the average daily volume of transactions underlying SOFR was close to $1 trillion, representing the largest rates market at any given tenor in the United States.

Because of its range of coverage, SOFR is a good representation of general funding conditions in the overnight Treasury repo market. As such, it reflects an economic cost of lending and borrowing relevant to the wide array of market participants active in these markets, including not only broker dealers, but also money market funds, asset managers, insurance companies, securities lenders, and the range pension funds.

SOFR is calculated as a volume weighted median of transaction level data observed over the course of a business day and is published on the NY Federal Reserve's Website at approximately 8:00 a.m. ET on the next business day. Looked at another way, SOFR is published on the day that overnight repo transaction is to be repaid, rather than on the day that transaction is entered into. This publication schedule is due to the need to receive and fully vet the large amounts of data underlying SOFR before the rate is published. SOFR is published for the business days that the Treasury repo market is open on, which are generally U.S. government securities secondary market trading days as determined by SIFMA.

Although SOFR is published at about 8:00 a.m. ET, if any errors are subsequently discovered in the transaction data in the calculation process that underlies it, or if any missing data subsequently became available, then SOFR may be republished on the same day. In such cases, the affected rate may be republished at approximately 2:30 p.m. ET. Rate Revisions will only be affected on the same day as initial publication and will only be republished if the change in the rate exceeds one basis point.

SOFR EFFECTIVE PERIOD

SOFR may vary each SOFR Effective Date and will be applicable for each SOFR Effective Period. To illustrate how SOFR would be utilized in a SOFR Effective Period, below is an illustration of a portion of actual January 2022 SOFR rates as published on the NY Federal Reserve's Website. SOFR is shown as of each SOFR Lookback Date, or three Business Days immediately preceding the SOFR Effective Date, and are the values used to determine the SOFR Index Rate and related interest expense for the SOFR Effective Period beginning with each SOFR Effective Date shown below:

[EACH A SOFR EFFECTIVE PERIOD]

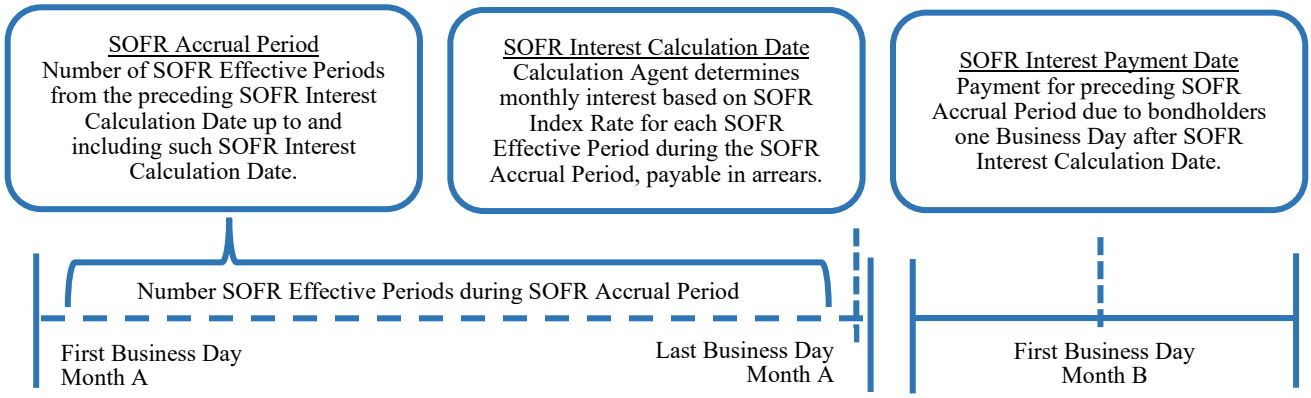
| SOFR EFFECTIVE DATE | DAYS IN SOFR EFFECTIVE PERIOD[1] | SOFR LOOKBACK DATE | SOFR[2] |
|---|---|---|---|
| Monday, January 3, 2022 | 1 day | Wednesday, December 29, 2021 | 0.050 |
| Tuesday, January 4, 2022 | 1 day | Thursday, December 30, 2021 | 0.050 |
| Wednesday, January 5, 2022 | 1 day | Friday, December 31, 2021 | 0.050 |
| Thursday, January 6, 2022 | 1 day | Monday, January 3, 2022 | 0.050 |
| Friday, January 7, 2022 | 3 days | Tuesday, January 4, 2022 | 0.050 |
| Monday, January 10, 2022 | 1 day | Wednesday, January 5, 2022 | 0.050 |
| *[Remainder of SOFR Effective Periods in January 2022 intentionally omitted – see below for more detail]* | | | |
| Friday, January 28, 2022 | 3 days | Tuesday, January 25, 2022 | 0.050 |

(1) Actual days elapsed from each SOFR Effective Date to the following SOFR Effective Date.
(2) Source: https://www.newyorkfed.org/markets/reference-rates/sofr.

SOFR INTEREST CALCULATION

The Calculation Agent will calculate and provide to CCCFA the amount of interest due and payable on each monthly Interest Payment Date for the Series 2022A-3 Bonds on the last Business Day of each Month (the "SOFR Interest Calculation Date"). On each SOFR Interest Calculation Date, the Calculation Agent will determine the amount of interest due over the period from (but not including) the Initial Issue Date or the preceding SOFR Interest Calculation Date to and including such SOFR Interest Calculation Date (the "SOFR Accrual Period"), and payable in arrears on each SOFR Interest Payment Date. With respect to the first SOFR Interest Calculation Date, interest will accrue from and including the Initial Issue Date.

Below is an illustration demonstrating the SOFR Index Rate reset mechanics as well as the mechanics for which interest will be calculated on a SOFR Interest Calculation Date:



Interest on the Series 2022A-3 Bonds will be calculated using simple interest. Simple interest is a long standing convention where the additional amount of interest owed each day is calculated by applying the daily rate of interest to principal borrowed and the payment due at the end of the period is the sum of those amounts. Simple interest does not consider the time value of money. SOFR is a compounded interest rate, however for purposes of determining interest on the Series 2022A-3 Bonds, SOFR will be applied to calculate simple interest on the unpaid principal amount of the Series 2022A-3 Bonds. Specifically, for the Series 2022A-3 Bonds, interest for each SOFR Effective Period (one or more days to include weekends and/or holidays) will be calculated as follows:

$$\text{Interest}_{\text{SOFR Effective Period}} = \text{Principal} \times \text{SOFR Index Rate}_{\text{SOFR Effective Period}} \times \frac{\text{Actual Days in SOFR Effective Period}}{}$$

On the SOFR Interest Payment Date, the total amount of interest owed is the sum of the amount of interest owed for each SOFR Effective Period during the SOFR Accrual Period. Specifically, each SOFR Accrual Period will be comprised of several SOFR Effective Periods from the first Business Day up to and including the last Business Day of the month. Interest will accrue on the Series 2022A-3 Bonds from (but excluding) the preceding SOFR Interest Calculation Date up to and including the SOFR Interest Calculation Date for which interest is being calculated. Specifically, for the Series 2022A-3 Bonds, interest on each SOFR Interest Calculation Date will be calculated as follows:

$$\text{Interest}_{\text{SOFR Accrual Period}} = \sum(\text{Interest}_{\text{First Business Day SOFR Effective Period}} + \text{Interest}_{\text{n SOFR Effective Periods}} + \text{Interest}_{\text{Last Business Day SOFR Effective Period}})$$

Where *n SOFR Effective Periods* is the number of SOFR Effective Periods between the first Business Day and last Business day of each month during a SOFR Accrual Period. Interest will be paid to bondholders, in arrears, one Business Day following the SOFR Interest Calculation Date, or the first Business Day of the following month.

ILLUSTRATIVE JANUARY 2022 SOFR ACCRUAL PERIOD

For informational purposes and to provide validation on calculation methodology being used for the Series 2022A-3 Bonds, a calculation of hypothetical interest that would have been owed on such Series 2022A-3 Bonds during January 2022 utilizing actual SOFR rates from January 2022 is provided below. NOTE THESE ARE HYPOTHETICAL VALUES THAT ARE FOR ILLUSTRATIVE PURPOSES ONLY.

| ILLUSTRATIVE JANUARY 2022 SOFR ACCRUAL PERIOD | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| SOFR Effective Date | SOFR Effective Day | SOFR Lookback Date | SOFR Lookback Day | SOFR[1] | Applicable Factor | Applicable Spread | SOFR Index | Days in SOFR Effective Period[2] | Actual Days in Year | Principal Outstanding | Interest Due |
| A | | | | B | C | D | E=BxC+D | F | G | H | E x (F/G) x H |
| 1/3/2022 | Mon | 12/29/2021 | Wed | 0.050 | | | | 1 | 365 | | |
| 1/4/2022 | Tues | 12/30/2021 | Thurs | 0.050 | | | | 1 | 365 | | |
| 1/5/2022 | Wed | 12/31/2021 | Fri | 0.050 | | | | 1 | 365 | | |
| 1/6/2022 | Thu | 1/3/2022 | Mon | 0.050 | | | | 1 | 365 | | |
| 1/7/2022 | Fri | 1/4/2022 | Tues | 0.050 | | | | 3 | 365 | | |
| 1/10/2022 | Mon | 1/5/2022 | Wed | 0.050 | | | | 1 | 365 | | |
| 1/11/2022 | Tues | 1/6/2022 | Thurs | 0.050 | | | | 1 | 365 | | |
| 1/12/2022 | Wed | 1/7/2022 | Fri | 0.050 | | | | 1 | 365 | | |
| 1/13/2022 | Thu | 1/10/2022 | Mon | 0.050 | | | | 1 | 365 | | |
| 1/14/2022 | Fri | 1/11/2022 | Tues | 0.050 | | | | 4 | 365 | | |
| 1/18/2022 | Tues | 1/12/2022 | Wed | 0.050 | | | | 1 | 365 | | |
| 1/19/2022 | Wed | 1/13/2022 | Thurs | 0.050 | | | | 1 | 365 | | |
| 1/20/2022 | Thu | 1/14/2022 | Fri | 0.050 | | | | 1 | 365 | | |
| 1/21/2022 | Fri | 1/18/2022 | Tues | 0.050 | | | | 1 | 365 | | |
| 1/24/2022 | Mon | 1/19/2022 | Wed | 0.050 | | | | 3 | 365 | | |
| 1/25/2022 | Tues | 1/20/2022 | Thurs | 0.040 | | | | 1 | 365 | | |
| 1/26/2022 | Wed | 1/21/2022 | Fri | 0.050 | | | | 1 | 365 | | |
| 1/27/2022 | Thu | 1/24/2022 | Mon | 0.040 | | | | 1 | 365 | | |
| 1/28/2022 | Fri | 1/25/2022 | Tues | 0.050 | | | | 3 | 365 | | |
| 1/31/2022 | Mon | 1/26/2022 | Wed | 0.040 | | | | 1 | 365 | | |

(1) Source: https://www.newyorkfed.org/markets/reference-rates/sofr
(2) Actual days elapsed from the each SOFR Effective Date to the next SOFR Effective Date.
(3) The SOFR Interest Calculation Date is the last Business Day of each month
(4) Interest payable in arrears on the first Business Day after the SOFR Interest Calculation Date, or the first Business Day of the following month.

# MEMORANDUM OF UNDERSTANDING ("MOU")

**Date:** April 18, 2022

**To:** Howard Chang
Chief Operating Officer
East Bay Community Energy Authority
hchang@ebce.org
(510) 809-7458

Garth Salisbury
Treasurer/Controller
California Community Choice Financing Authority
gsalisbury@mcecleanenergy.org
(415) 464-6037

**From:** Morgan Stanley & Co. LLC ("Morgan Stanley")

**Re:** California Community Choice Financing Agency Prepay Transaction on behalf of the East Bay Community Energy

***Overview***

The California Community Choice Financing Agency ("CCCFA" or the "Issuer") seeks to procure a 30-year supply of energy, through the issuance of Clean Energy Project Revenue Bonds (the "Bonds") issued by CCCFA. The CCCFA will sell all of the Prepaid Energy acquired from this transaction to the East Bay Community Energy Authority ("EBCE" or "Project Participant").

***Rating Agency Fees and Green Bond Opinion Fee***

*Rating Agency Fees and expenses ("Rating Agency Fees") are paid from the proceeds of the Bonds, with underwriting fees and expenses calculated as a discount on the par amount of Bonds. All fees, including Rating Agency Fees, are payable from the Bonds' proceeds.*

*In the event that the Bonds are not issued due to market conditions and there remains a Rating Agency Fee payable to the rating agencies, Morgan Stanley and CCCFA agree to split this Rating Agency Fees on an equal basis. If the Bonds are not issued due to the CCCFA or the Project Participant's unwillingness or inability to proceed, other than due to an inability to hit a minimum established target discount, the Rating Agency Fees will be their sole responsibility. To the extent that CCCFA incurs any Rating Agency Fees if the bonds are not issued, the Project Participant agrees that it will be liable for any costs and make direct payment to Moody's for such fees.*

*In the event a Green Bond Second Opinion is obtained and the Bonds are not issued (unless the Bonds are not issued due to the CCCFA or the Project Participant's unwillingness or inability to proceed, other than due to an inability to hit a minimum established target discount) or the Green Bond Second Opinion is not used, the fee payable to the Second Opinion provider (the "Green Bond Fees") shall be incurred by Morgan Stanley and in such event, to the extent the Green Bond Fees were already paid by the Project Participant or by CCCFA, Morgan Stanley agrees to reimburse the Project Participant or CCCFA as appropriate.*

*Morgan Stanley shall have no responsibility for any fees or expenses incurred by CCCFA or the Project Participant, or their agents, employees, advisors or counsel, in connection with the issuance*

*of the Bonds and the purchase of the Prepaid Energy, other than Rating Agency Fees and Green Bond Fees as described in this MOU and as further described in the Bond Purchase Agreement (as defined herein).*

***Miscellaneous***

The CCCFA and Project Participant each acknowledge and agree that: (i) the transaction contemplated by this MOU is, in each case, an arm's length, commercial transaction between the CCCFA and the Underwriter and the Energy Supplier, as applicable, in which the Underwriter and the Energy Supplier are each acting solely as a principal and not acting as a municipal advisor, financial advisor or fiduciary to the CCCFA or the Project Participant; and (ii) the CCCFA and Project Participant will consult their own legal, accounting, tax, financial and other advisors, as applicable, to the extent each has deemed appropriate.

The CCCFA acknowledges and agrees that Morgan Stanley is not making a commitment to extend credit, make a loan or otherwise fund the Bonds beyond the obligations contained in a mutually satisfactory bond purchase agreement (the "Bond Purchase Agreement"). The CCCFA acknowledges that the services provided under this MOU involve professional judgment on Morgan Stanley's part and that the results cannot be, and are not, guaranteed.

Nothing contained herein shall preclude the Underwriter from carrying on its customary and usual business activities. The Underwriter specifically reserves the right, but is not obligated, to bid for and maintain secondary markets on any of CCCFA's outstanding bonds subject to appropriate information barriers. Services provided by the Underwriter in connection with this MOU shall not limit the Underwriter from providing services for the CCCFA or the Project Participant in conjunction with other services requested by the CCCFA or Project Participant except as limited by rule of law or regulation.

In connection with services agreed to herein, it is understood that the Underwriter will render professional services as an independent contractor. Neither the Underwriter nor any of its agents or employees shall be deemed an employee of the CCCFA or the Project Participant for any purpose.

Except as described in this paragraph, this MOU is intended to be, and shall be construed only as, a non-binding MOU, intent on summarizing and evidencing discussions between the CCCFA, the Project Participant, and Morgan Stanley as of the date hereof. Except as described below, any legally binding obligation of the parties with respect to the transaction described herein shall exist only upon the execution and delivery of definitive agreements related thereto, into which this MOU and all prior discussions shall merge. It is expressly understood that this MOU is not a contract to execute any definitive agreements or to otherwise consummate the transactions described herein. The parties will cooperate in negotiating definitive agreements providing for the transactions contemplated by this MOU, but each party reserves the right of final approval or disapproval, for any reason, of the documentation relating to such agreements. Notwithstanding the foregoing, the provisions above under the headings "Rating Agency Fees and Green Bond Opinion Fee" shall be binding upon the parties.

Sincerely,

_____

Grant Fraunfelder, Executive Director
MORGAN STANLEY & CO. LLC

**ACCEPTED AND AGREED**:

EAST BAY COMMUNITY ENERGY

By:_____

Name:_____

Date:_____

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By:_____

Name:_____

Date:_____