

LETTER AGREEMENT

[], 20[]

City of San José
Finance Department
200 East Santa Clara Street, 13th Floor
San José, California 95113
Attention: Director of Finance
Telephone: 408 535 7010
Email: debt.management@sanjoseca.gov

With a copy to:
City of San José
Energy Department
4 N 2nd St, Ste 700
San José, CA 95113
Attention: Director of Energy
Telephone: 408 535 4880
Email: sjceaccounting@sanjoseca.gov

California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901
Email: notices@cccfa.org

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 City of San José, a California municipal corporation (“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 Agreement (together with the Power Supply Contract and the Prepaid Agreement, the “Prepay Energy Agreements”), dated as of the Bond Closing Date (as defined in the Prepaid Agreement), 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 [MSCG] 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 all of the Energy (and any associated products set forth in the Assignment Agreement) delivered under the applicable power purchase agreement for each Month of the applicable EPS Energy Period and (II) for payment by MSES or MSCG as applicable to the PPA Supplier under such subsequent power purchase agreement of the Day-Ahead Average Price for each Month of the applicable EPS Energy Period, with such amounts to be credited in the PPA Supplier's monthly invoice to Project Participant against other amounts owed by Project Participant under the Assigned PPA during the EPS Energy Period;
- (2) any third party PPA Supplier must satisfy MSCG's internal credit and approval requirements and other requirements applied on a nondiscriminatory basis, including any "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies;
- (3) any such assignment must be agreed and consented to by Project Participant, MSES and MSCG in their reasonable discretion; and
- (4) the Parties recognize that MSCG will be obligated to sell and deliver Assigned Product it receives from a third party PPA Supplier to MSES under the Energy Management Agreement; MSES will be obligated to deliver Assigned Product that it acquires to Issuer under the terms of the Prepaid Agreement; and Issuer will be obligated to deliver Assigned Product that it acquires to Project Participant under the terms of the Power Supply Contract.

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

- (1) Project Participant must consent to MSCG's procurement of any such EPS Compliant Energy for ultimate redelivery to Project Participant, with such consent not to be unreasonably withheld;
- (2) the Parties shall act in good faith and in a Commercially Reasonable manner to negotiate any necessary amendments to the Prepay Energy Agreements to facilitate the delivery of such EPS Compliant Energy; and
- (3) the period of delivery for any such EPS Compliant Energy (any such period, a "MSCG EPS Energy Period") shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in a subsequent Reset Period.

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

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

- (a) the Parties' obligations set forth in Paragraph 1 shall continue to apply;
- (b) Project Participant shall not make any new commitment to purchase Priority Energy during such a remarketing; and
- (c) consistent with [Section 7.5] of the Power Supply Contract, Project Participant shall exercise Commercially Reasonable Efforts to remediate any Disqualified Remarketing Proceeds resulting from MSES's remarketing.

3. **Assignment Early Termination.** With respect to any Assignment Agreement entered into among MSCG, Project Participant and a PPA Seller (as defined in the form of Assignment Agreement set forth as Exhibit A hereto), each of MSCG and Project Participant agree that it shall only exercise its right under an at will termination provision of an Assignment Agreement (as set forth in [Section 4(b)(i)] of Exhibit A hereto) to deliver a written notice of termination of the Assignment Period under the Assignment Agreement consistent with the following:

(a) either MSCG or Project Participant may deliver a notice of termination under the Assignment Agreement if any of the following occur; provided that, Project Participant shall deliver a notice of termination contemporaneous with any assignment by Project Participant of its interest in the Power Supply Contract, provided further that MSCG in any event shall be entitled to deliver a notice of termination to the extent Project Participant fails to do so in connection with the assignment of Project Participant's interest under the Power Supply Contract:

- i. the suspension, expiration, or termination of performance of the Assigned PPA by either Project Participant or PPA Seller for any reason other than the occurrence of force majeure under the Assigned PPA;
- ii. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement, Energy Management Agreement or Power Supply Contract;
- iii. to the extent that MSCG and Project Participant have mutually agreed upon a replacement Assignment Agreement (as defined in the Power Supply Contract) that will replace the Assigned Rights and Obligations under the Assignment Agreement immediately following the termination thereof, with respect to which the 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 of termination from MSCG or Project Participant under the Assignment Agreement; or
- iv. any representation or warranty in [Section 5.4] of the Prepaid Agreement or [Section 5.4] of the Power Supply Contract proves to be incorrect in any respect;

(b) MSCG may, in its sole discretion, deliver a notice of termination of the Assignment Agreement if any of the following occur:

- i. any event or circumstance occurs that would either give either Project Participant or PPA Seller the right to terminate or suspend performance under the Assigned PPA and such event or circumstance is not remedied within the applicable cure periods set forth in the Assigned PPA (regardless of whether Project Participant or PPA Seller exercises such right); or
- ii. the execution of an amendment, waiver, supplement, modification or other change to the Assigned PPA that adversely affects the Assigned Rights and Obligations or MSCG's rights or obligations under the Assignment Agreement (provided that

MSCG shall not have a right to terminate under this clause (ii) to the extent that MSCG (A) receives prior notice of such change and (B) provides its written consent thereto);

(c) Project Participant may, in its sole discretion, deliver a notice of termination of the Assignment Agreement if any of the following occur:

- i. if MSCG fails to pay when due any amounts owed under the Assignment Agreement in respect of any Delivered Product Payment Obligation and such failure continues for three (3) Business Days following receipt by MSCG of written notice thereof;
- ii. if any change, event or effect occurs, including but not limited a change in applicable laws or regulations, any issues with PPA Seller or the Assigned PPA, a dispute under the Assigned PPA or other similar circumstance, that individually or collectively have or are reasonably expected by Project Participant to have a material adverse effect upon (A) Project Participant, (B) its rights and obligations under the Assignment Agreement, the Power Supply Contract, or the Assigned PPA, or (C) the benefit Project Participant is receiving by assigning the Assigned Rights and Obligations, with respect to which the Assignment Early Termination Date shall be the date set forth in a written notice delivered by Project Participant to the PPA Seller and MSCG; provided that (x) Project Participant will provide notice to the PPA Seller and MSCG as soon as is reasonably possible that Project Participant anticipates exercising this termination right, and (y) Project Participant shall exercise commercially reasonable efforts to propose and agree with MSCG upon a replacement Assignment Agreement prior to exercising this termination right.

Any such notice sent in accordance with the foregoing provisions of this Section 3 shall specify therein the Assignment Early Termination Date.

For the avoidance of doubt, each of MSCG and the Project Participant agree that it shall not terminate an Assignment Agreement pursuant to the at will termination provision thereof (as set forth in [Section 4(b)(i)] of Exhibit A hereto) except as set forth immediately above.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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) Any dispute or claim 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 9(b)(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 fifteen (15) 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 9(b).

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 Referees 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. 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.

10. **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

CITY OF SAN JOSE
a California municipal corporation

By: _____
Maria Öberg
Finance Director

APPROVED AS TO FORM:
Susana Alcala Wood, City Attorney

By: _____
Rosa Tsongtaatarii
Chief Deputy City Attorney

ISSUER

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name: Garth Salisbury

Title: Treasurer/Controller

EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR THIRD PARTY AS PPA SUPPLIER

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [____] (the “**Assignment Agreement Effective Date**”) by and among [PPA SELLER], a [____] limited liability company (“**PPA Seller**”), the City of San José, a California municipal corporation (“**PPA Buyer**”), and Morgan Stanley Capital Group Inc., a Delaware corporation (“**MSCG**”).

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with a prepaid electricity transaction between Issuer (defined below) and MSES (defined below), 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);

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

WHEREAS, pursuant to this Agreement, during the Assignment Period, 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.

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. 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 Product” means (i) [PV Energy] and (ii) [Green Attributes (PCC1)].¹

“Assigned Rights and Obligations” means (i) the rights of PPA Buyer under the PPA to receive the 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 4(b).

“Assignment Period” has the meaning specified in Section 4(a).

“Assignment Period End Date” means 11:59:59 p.m. pacific prevailing time on [_____].

“Assignment Period Start Date” means [_____].

“Custodian” means U.S. Bank Trust Company, National Association.

“Delivered Product Payment Obligation” has the meaning specified in Section 3(a).

“Issuer” means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended).

“Month” means a calendar month.

“Monthly Gross Amount” has the meaning specified in Section 3(c).

“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.

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

“PPA FM Claims” has the meaning specified in Section 3(b).

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

¹ NTD: The bundle of products may vary depending on the PPA/Confirm, but note that attributes other than energy and RECs may not be included in the Assigned Products for the prepay. PPA Buyer will remain responsible for retirement of the RECs.

“**Prepaid Agreement**” means that certain Prepaid Energy Sales Agreement dated as of [____], 20[____] by and between MSES and Issuer as amended from time to time.

“**Prepay Power Supply Contract**” means that certain Prepay Power Supply Contract dated [____], 20[____] by and between PPA Buyer and Issuer as amended from time to time.

“**Receivables**” has the meaning given to such term in Section 3(f).

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

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 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.

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 (including without limitation obligations with respect to payment for any Product not included in the Assigned Product and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be “**Retained Rights and Obligations**” that are retained solely by PPA Buyer, 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.** MSCG’s sole obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on Appendix 1 (the “**Delivered Product Payment Obligation**”). MSCG and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [____] of the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, and shall remain so responsible to make such payments by the times and on the terms set out in the PPA in the event that either (i) MSCG does not make the payments into the Custodial Account as described above

or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.

(b) **Retained Rights and Obligations.** 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 claim will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA. The Parties acknowledge and agree that (i) such claims shall include any claims of Force Majeure under the PPA (“**PPA FM Claims**”) and (ii) any claims of force majeure (howsoever defined) under the Prepaid Agreement and the Prepay Power Supply Contract shall be determined pursuant to such agreements and shall not affect the PPA FM Claims.

(c) **Invoicing.** During the Assignment Period, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the “**Monthly Gross Amount**”). Promptly following PPA Buyer’s receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than (1) 7 days thereafter if payment of such invoice is due by less than 30 days after PPA Buyer’s receipt of such invoice; or (2) 10 days thereafter if payment of such invoice is due by 30 days or more after PPA Buyer’s receipt of such invoice, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG and (ii) a statement to each of MSCG and the Custodian indicating (A) the Monthly Gross Amount; (B) the Delivered Product Payment Obligation; and (C) the “Retained Payment Obligation”, which shall be an amount equal to the Monthly Gross Amount minus the Delivered Product Payment Obligation. PPA Buyer and MSCG covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA, *provided*, that the liability of MSCG hereunder to PPA Seller is limited as described on Appendix 1. PPA Buyer and MSCG may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and MSCG of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, the Parties acknowledge and agree that any invoice adjustments or reconciliations occurring after the initial settlement of amounts due under a monthly invoice shall be resolved exclusively between PPA Seller and PPA Buyer pursuant to the terms of the PPA.

(d) **Scheduling.** All scheduling of 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 during the Assignment Period (i) title to Assigned Product will pass to MSCG upon delivery by PPA Seller at the 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 Product; and (iv) PPA Buyer will provide copies to MSCG of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under [Section

___] of the PPA, (D) invoices delivered by PPA Seller under [Section ___ of the PPA] (with a copy to the Custodian if and to the extent retained by PPA Buyer and MSCG), and (E) any other information reasonably requested by MSCG relating to Assigned Product.

(e) **Amendments.** PPA Buyer 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.

(f) **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 (1) at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations, and (2) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice.

4. 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; and further provided that the Assignment Period will automatically terminate upon the expiration or early termination of either the Delivery Term or the PPA.

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

- i. delivery of a written notice of termination by either MSCG or PPA Buyer to each of the other Parties hereto;
- ii. delivery of a written notice of termination by PPA Seller to each of MSCG and PPA Buyer following MSCG's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for three (3) Business Days following receipt by MSCG of written notice thereof;
- iii. delivery of a written notice by PPA Seller if any of the events described in [Section 1.1, definition of "Bankrupt" of the PPA], occurs with respect to MSCG; or

iv. delivery of a written notice by MSCG if any of the events described in [Section 1.1, definition of “Bankrupt” of the PPA], occurs with respect to PPA Seller.

(c) **Reversion of Assigned Rights and Obligations.** The Assignment Period will end at the end of the last delivery hour on the date specified in the termination notice provided pursuant to Section 4(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Sections 4(d) and at the expiration of the Assignment Period 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 or early termination pursuant to Section 4(d) 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 or prior to the expiration of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or the expiration of the Assignment Period.

(d) **Early Termination for PPA Termination.** The Assignment Period will automatically terminate upon the expiration or early termination of the PPA.

5. Representations and Warranties.

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

(b) **No Default.** As of the Assignment Agreement Effective Date, 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) **Representations.** Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:

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, 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 presently in effect, 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.

6. Miscellaneous.

Article [] (Confidential Information), [] (Amendments), [] (No Agency, Partnership, Joint Venture or Lease), Sections [] (Severability), [] (Electronic Delivery), [] (Counterparts), Section [] (Binding Effect) and [] (Forward Contract) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein. For avoidance of doubt, and notwithstanding anything to the contrary in this Agreement: (i) nothing in this Agreement shall modify any provision of the PPA; (ii) PPA Buyer remains obligated to perform all its obligations under the PPA notwithstanding the limited assignment under this Agreement (including without limitation any such obligations not timely performed by MSCG under this Agreement) and any failure by MSCG to make payments to PPA Seller when due under the PPA shall be a Buyer Event of Default under the PPA if not cured within the applicable cure period specified in [Section 11(a)(i) of the PPA]; (iii) this Agreement shall not purport to convey or otherwise allege any right of PPA Buyer or MSCG to make any prepayment to PPA Seller under the PPA or to file or impose any lien on the Facility; and (iv) neither MSCG nor PPA Buyer shall make any assignment of its rights or delegation of its obligations under this Agreement without the prior written consent of PPA Seller, which it may withhold in its sole discretion.

7. Costs and Expenses.

The Parties shall 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.

8. Notices.

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with PPA [Section 9.2] and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify MSCG of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to MSCG shall be provided to the address set forth in Appendix 2. Each Party may update its address from time to time by notice to the other Parties.

9. Governing Law; 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 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) **Judicial Reference.** Any dispute or claim 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 9(b)(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 fifteen 15 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 9.

ii. Applicability; Selection of Referees. 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 energy 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.

iii. Inability to Agree upon Third Referee. 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.

iv. 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.

v. Decision. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees 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. 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.

vi. Expenses. Each of MSCG, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller.

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

between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

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

[PPA SELLER]

By: _____
Name: _____
Title: _____

CITY OF SAN JOSE
a California municipal corporation

By: _____
Maria Öberg
Director of Finance

APPROVED AS TO FORM:
Susana Alcala Wood, City Attorney

By: _____
Rosa Tsongtaatarii
Chief Deputy City Attorney

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name: _____
Title: _____

Signature Page to Limited Assignment Agreement

Appendix 1 Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller, as may be amended from time to time.

Delivery Point: [____]

Further Information: PPA Seller shall transfer or, to the extent applicable, continue to transfer, to PPA Buyer the WREGIS Certificates associated with all [Renewable Energy Credits] corresponding to all [PV Energy] under the PPA pursuant to [Section ____ of 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 after such notice period has expired, unless otherwise agreed. All Assigned Product delivered by PPA Seller to MSCG shall be a sale made at wholesale, with MSCG reselling all such Assigned Product.

Limitation of MSCG Liability. MSCG has separately agreed with the PPA Buyer and the Custodian (pursuant to the Custodial Agreement dated [---], among PPA Buyer, MSCG and the Custodian (the “**Custody Agreement**”)) to pay into the custodial account specified in the Custody Agreement (the “**Custodial Account**”) for Assigned Product delivered in each Month of the Assignment Period at the “Day-Ahead Average Price” as defined below (“**Floating Price Payments**”). MSCG agrees for the benefit of the PPA Seller to pay the Floating Price Payments into the Custodial Account, and MSCG’s payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement. PPA Buyer and PPA Seller each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by MSCG shall not entitle (i) PPA Seller for payments in excess of the [Contract Price] for Assigned Product delivered hereunder or (ii) PPA Buyer to pay less than the [Contract Price] for Assigned Product delivered hereunder. PPA Buyer and MSCG each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by MSCG shall not entitle (i) MSCG to any payments from PPA Seller or (ii) affect the Custodian’s obligation to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA. At all times the PPA Buyer shall remain obligated for the payment of all amounts owing under the terms of the PPA including the Monthly Gross Amount under each invoice. To the extent that (x) MSCG fails to pay all or any portion of the Delivered Product Payment Obligation when due in accordance with the terms of the Custody Agreement (such amount, the “**MSCG Payment Shortfall**”) and (y) PPA Buyer makes payment of an amount equal to the MSCG Payment Shortfall into the Custodial Account or directly to PPA Seller to cure such shortfall, then MSCG shall be obligated to make payment within two (2) Business Days, without duplication, of an amount equal to the MSCG Payment Shortfall to PPA Buyer.

“Day-Ahead Average Price” means the result of (i) (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 plus (ii) the Index Adder (as set forth in the table immediately below) for the relevant Month. As used in this definition, “Pricing Interval” means the unit of time for which CAISO (or other entity that publishes such prices) establishes a separate price. As used in this definition “Day-Ahead

Market Price” means the Day Ahead Market or Locational Marginal Price for [] for each applicable hour as published by [], or as such price may be corrected or revised from time to time by [] in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

Month	Index Adder (\$/MWh)
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]

Appendix 2

MSCG Notice Information

Morgan Stanley Capital Group Inc.
1585 Broadway
New York, NY 10036-8293
Email: energyprepay@morganstanley.com

Appendix 3

Copy of PPA

[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**”), City of San José, a California municipal corporation (“**PPA Buyer**”), 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, 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 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 Quantity” means all Assigned Product delivered in accordance with the PPA by PPA Seller in each year during the Assignment Period.

“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 4(b)5(b).

“Assignment Period” has the meaning specified in Section 4(a)5(a).

“Assignment Period End Date” means 11:59:59 p.m. pacific prevailing time on [_____].

“Assignment Period Start Date” means [_____].

“Business Day” has the meaning specified in the PPA.

“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.

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

“Issuer” means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended).

“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.

“Power Supply Contract” means that certain Power Supply Contract dated as of [____], 20[___] by and between PPA Buyer and Issuer.

“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 [____], 20[___] by and between MSES and Issuer.

“Receivables” has the meaning given to such term in Section **Error! Reference source not found.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 of the MWhs per month specified in Appendix 1 as the "Settlement Monthly Quantity" for purposes of determining amounts due under this Agreement, the Prepay Power Supply Contract and the Prepaid Agreement for each month of the Assignment Period (as further described below); and

(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).

ii. PPA Seller shall deliver each monthly invoice and related supporting data during the Assignment Period to each of PPA Buyer and MSES, and each such invoice shall indicate (A) the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"); (B) the Delivered Product Payment Obligation; and (C) the Retained Payment Obligation, which (I) shall be determined by subtracting the Delivered

Product Payment Obligation from the Monthly Gross Amount and (II) shall reflect an amount due from PPA Buyer to the extent it is a positive number and an amount due to PPA Buyer to the extent it is a negative number; provided in addition that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice will be resolved solely between PPA Buyer and PPA Seller. The Delivered Product Payment Obligation and Retained Payment Obligation shall be administered by a custodian who will pay (1) the Monthly Gross Amount to PPA Seller on each payment due date and (2) the absolute value of the Retained Payment Obligation to PPA Buyer to the extent such amount is negative for any given Month.

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

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

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

(e) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any

such Receivables relate to Assigned Product purchased by MSES pursuant to the Assigned Rights and Obligations, MSES may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay MSES for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

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

4. Forward Contract.

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

5. Assignment Period; Assignment Early Termination.

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

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

- i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to Article XIII thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;
- ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure

under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;

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

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

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

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

custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSES or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to MSES, and with a copy to PPA Buyer or PPA Seller, as applicable;

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

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

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

6. Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Counterparts.

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

8. Costs and Expenses.

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

9. Amendments.

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

10. Notices.

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

11. Miscellaneous.

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

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

(c) **Judicial Reference.** Any dispute or claim 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(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 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 fifteen 15 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(c).

ii. Applicability; Selection of Referees. 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 energy 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.

iii. Inability to Agree upon Third Referee. 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.

iv. 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.

v. Decision. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees 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. 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.

vi. 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.

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: _____

CITY OF SAN JOSE
a California municipal corporation

By: _____
Maria Öberg
Director of Finance

APPROVED AS TO FORM:
Susana Alcala Wood, City Attorney

By: _____
Rosa Tsongtaatarii
Chief Deputy City Attorney

MORGAN STANLEY ENERGY STRUCTURING, L.L.C.

By: _____
Name: _____
Title: _____

Signature Page to Limited Assignment Agreement

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. To include an Index Adder to the floating price, if applicable]

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.]