

FORM OF LIMITED ASSIGNMENT AGREEMENT¹

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [____], 20[___] (the “**Effective Date**”) by and among [____], a [____] (“**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 one or more prepaid energy transactions entered into between an Issuer and a Prepay Seller, and with effect from and including the Assignment Period Start Date, 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) with respect to any and all Assignment Appendices (as defined below) during the Assignment Period (as defined below);

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will receive the Assigned Product specified in any and all Assignment Appendices in effect from time to time and MSCG will deliver such Assigned Product to Prepay Seller(s), 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 with respect to any and all Assignment Appendices then in effect.

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 [____].²

“**Assigned Rights and Obligations**” means (i) the rights of PPA Buyer under the PPA to receive the Assigned Product in each Month as specified in any and all Assignment Appendices then in effect during the Assignment Period 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.

¹ NTD: This draft Limited Assignment Agreement was prepared without reference to the underlying PPA and as such, remains subject to revision.

² NTD: This will specify the product(s) in the underlying PPA and note that, the Assignment Appendices will specify the *quantity* of Assigned Products.

“Assignment Appendix” means each Assignment Appendix in the form attached hereto as Appendix 2 and delivered by MSCG hereunder pursuant to Section 11.

“Assignment Appendix End Date” has, with respect to each Assignment Appendix, the meaning specified therein.

“Assignment Appendix Period” means, with respect to each Assignment Appendix, the period from the Assignment Appendix Start Date to the Assignment Appendix End Date; provided that no Assignment Appendix Period may commence prior to the Assignment Period Start Date and no Assignment Appendix Period may extend beyond the Assignment Period End Date.

“Assignment Appendix Start Date” has, with respect to each Assignment Appendix, the meaning specified therein.

“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 [____], 20[____].

“Assignment Period Start Date” means [____], 20[____].

“Custodian” has, with respect to each Assignment Appendix, the meaning specified therein.

“Custody Agreement” has, with respect to each Assignment Appendix, the meaning specified therein.

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

“Effective Date” has the meaning set forth in the first paragraph above.

“Issuer” has, with respect to each Assignment Appendix, the meaning specified therein.

“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.

“Person” means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization, or government agency.

“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.

“Prepaid Agreement” has, with respect to each Assignment Appendix, the meaning specified therein.

“Prepay Power Supply Contract” has, with respect to each Assignment Appendix, the meaning

specified therein.

“**Prepay Seller**” has, with respect to each Assignment Appendix, the meaning specified therein.

“**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 specified in any and all Assignment Appendices then in effect during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer’s assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product specified in any and all Assignment Appendices then in effect and, subject to Section 3, the delegation of the 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 PPA Buyer’s right, title and interest in and to the Assigned Product specified in any and all Assignment Appendices then in effect during the Assignment Period, and PPA Buyer’s delegation 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 (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 relevant Assignment Period. 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 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 [Uncontrollable Force] 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 specified in any and all Assignment Appendices then in effect and, in any event, no later than (1) seven (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) ten (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 (x) the liability of MSCG hereunder to PPA Seller is limited as described on Appendix 1 and (y) the Monthly Gross Amount payable to PPA Seller shall be reduced to the extent that PPA Buyer disputes any of the invoiced amounts pursuant to Section []³ of the PPA. 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 any Assignment Period specified in any and all Assignment Appendices then in effect (i) title to Assigned Product specified in any and all Assignment Appendices then in effect will pass to MSCG upon delivery by PPA Seller at the Delivery Point (as defined in Appendix 1) in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to one or more Prepay Sellers (as set forth in the applicable Assignment Appendix), Issuer (as set forth in the applicable Assignment Appendix) 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 an [Uncontrollable Force] 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 the PPA, if any, (D) invoices delivered by PPA Seller under 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 unless MSCG receives prior written notice thereof. 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.

³ NTD: For inclusion to the extent the PPA includes a provision that PPA Buyer’s payments may be reduced with respect to disputed amounts.

(f) **Setoff of Receivables.** Pursuant to the applicable Prepaid Agreement(s), Prepay Seller(s) may purchase the rights to payment of the net amounts owed by PPA Buyer under the applicable 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, the applicable Prepay Seller 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**” under an Assignment Appendix shall begin on the Assignment Appendix Start Date and extend until the Assignment Appendix End Date or as otherwise terminated early pursuant to Section 4(b); provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date with respect to such Assignment Appendix; provided further that the Assignment Period under each Assignment Appendix will automatically terminate upon the expiration or early termination of either the [Delivery Term] (as defined in the PPA) or the PPA.

(b) **Early Termination.** An “**Assignment Early Termination Date**” will occur under the following circumstances and as of the dates and for the applicable Assignment Appendices specified below:

i. delivery of a written notice of termination by either MSCG or PPA Buyer to each of the other Parties hereto, which Assignment Early Termination Date shall occur under the Assignment Appendices specified in such written notice and on the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer;

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 and PPA Buyer of written notice thereof, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect upon the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer;

iii. delivery of a written notice by PPA Seller if any of the events described in Section [____] (Bankruptcy Event of Default)] of the PPA, occurs with respect to MSCG, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect immediately on the date of PPA Seller’s delivery of notice of its election to MSCG and PPA Buyer; or

iv. delivery of a written notice by MSCG if any of the events described in Section [____] (Bankruptcy Event of Default)] of the PPA, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect immediately on the date of MSCG’s delivery of notice of its election to PPA Seller and PPA Buyer.

(c) **Reversion of Assigned Rights and Obligations.** The applicable Assignment Period(s) will end at the end of the last delivery hour on the date specified in any 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 any Assignment Period the Assigned Rights and Obligations under each applicable Assignment Appendix will revert from MSCG to PPA Buyer. Any Assigned Rights and Obligations under an Assignment Appendix that would become due for payment or performance on or after such Assignment Early Termination Date or early

termination pursuant to Section 4(d) with respect to such Assignment Appendix 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 an 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 expiration of the Assignment Period.

(d) **Early Termination for PPA Termination.** The Assignment Period for all Assignment Appendices then in effect will automatically terminate upon the early termination of the PPA.

5. Representations and Warranties.

(a) **Copy of PPA.** As of the 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 4.

(b) **No Default.** As of the 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) **Other.** Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSCG that:

i. Except for any collateral assignment, 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 as of the 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 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 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.**

[Sections __ (Severability), __ (Confidentiality), __ (Binding Effect), __ (Limitation on Damages), __ (Forward Contracts), __ (Amendment), and __ (Execution by Counterparts)] 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 of 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 any PPA shall be a Buyer Event of Default under the PPA if not cured within the applicable cure period specified in such PPA; (iii) this Agreement does not purport to convey or otherwise allege any right of PPA Buyer or MSCG to make any prepayment to PPA Seller under the PPA; and (iv) neither MSCG nor PPA Buyer shall make any assignment of its rights nor any 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 Section [] of the PPA, as modified by the PPA 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 3. 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 Protocol. 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.

11. Assignment Appendix Prepaid Transaction Details. From time to time, MSCG may deliver one or more completed Assignment Appendices to the other Parties hereto completing the terms that are currently bracketed therein, and each such Assignment Appendix shall be binding upon each of the Parties hereto; provided that the aggregate sum of the Assigned Product under all Assignment Appendices then in effect will not exceed the [Contract Quantity] under and as defined in the PPA. As set forth in Appendix 1 hereto, MSCG's payment obligations are limited to any Assigned Product delivered pursuant to the Assignment Appendices then in effect. Each Assignment Appendix will set forth certain details relating to the commodity prepayment transaction pursuant to which all or a portion of the Assigned Product shall be delivered; provided that MSCG may, at any time with the prior consent of PPA Buyer but without the consent of PPA Seller, by written notice to PPA Seller and PPA Buyer, (i) rescind any Assignment Appendix or (ii) update or amend any Assignment Appendix to change any or all of the terms specified therein, including: (A) an increase or decrease of the volume of Assigned Product to be delivered into the applicable commodity prepayment transaction (including without limitation a change thereto to reflect that all MWh of Assigned Product delivered in accordance with the PPA by PPA Seller shall be delivered into one commodity prepayment transaction, subject only the aggregate quantity limit specified above); (B) a change in the relevant commodity prepayment transaction (i.e., the "Prepaid Agreement") pursuant to which the Assigned Product shall be delivered; a change in the identity of the Prepay Seller; or (C) a change to the Assignment Appendix Start Date and/or the Assignment Appendix End Date. For the avoidance of doubt, (I) more than one Assignment Appendix may be in effect at any time, and (II) at any given time, less than one hundred percent (100%) of the [Contract Quantity] under and as defined in the PPA may be assigned pursuant to the Assignment Appendices then in effect.

[Signature Pages Follow]

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: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Name: _____

Title: _____

MORGAN STANLEY CAPITAL GROUP INC.

By: _____

Name: _____

Title: _____

Appendix 1 Assigned Rights and Obligations

PPA: []

Delivery Point: The [“Delivery Point”] as defined in the PPA.

Limitation of MSCG Liability. MSCG has separately agreed with PPA Buyer and the Custodian pursuant to the Custody Agreement to pay the “Day-Ahead Average Price” (as defined below) into the custodial account specified in the Custody Agreement (the “**Custodial Account**”) for a specified portion of the Assigned Product delivered to the Delivery Point during each Month of any Assignment Period pursuant to all Assignment Appendices then in effect (“**Floating Price Payments**”). MSCG agrees for the benefit of 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 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 (I) PPA Seller shall have no further claim whatsoever against MSCG for such amount and (II) 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. For the avoidance of doubt, MSCG’s obligations hereunder are limited to only the Assignment Appendices then in effect.

“**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, if any, as set forth in an Assignment Appendix, 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 [TH_NP15_GEN-APND] for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by CAISO in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

Appendix 2

Assignment Appendix - [A][B][C]

Date: [____], 20[__]

“Assignment Appendix End Date” means 11:59:59 p.m. pacific prevailing time on [____], 20[__].

“Assignment Appendix Start Date” means [____] 1, 20[__].

“Custodian” means U.S. Bank Trust Company, National Association, a national banking association.

“Custody Agreement” means the Consolidated, Amended & Restated Custodial Agreement dated as of [____], 20[__] among the Issuer, PPA Buyer, MSCG, each applicable Prepay Seller and the Custodian, as from time to time amended, restated, supplemented or otherwise modified.

“Index Adder” means \$[____]/MWh.

“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).

“Prepaid Agreement” means that certain Prepaid Energy Sales Agreement, dated as of [____], 20[__] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified.

“Prepay Power Supply Contract” means that certain Power Supply Contract, dated as of [____], 20[__] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified.

“Prepay Seller” means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company, or any other Person that is the prepay seller under the terms of the Prepaid Agreement from time to time.

Assigned Product subject to this Assignment Appendix: As set forth immediately below, [the percentage of Assigned Product]/[the monthly quantities of Assigned Product] delivered to the Delivery Point: [____]

Appendix 3

MSCG Notice Information

Morgan Stanley Capital Group Inc.
1585 Broadway
New York, NY 10036-8293
Email: CCCFA_202[][X]_ms_notices@morganstanley.com
With a mandatory copy to:
msdoc-misc-notices@morganstanley.com

Appendix 4

Copy of PPA

[To be attached.]