



AGENDA

Meeting of the Finance and Risk Management Committee San Diego Community Power (Community Power)

October 17, 2024
3:00 p.m.

City of Chula Vista
Council Chambers, 276 Fourth Avenue, Chula Vista, CA

The meeting will be held in person at the above date, time and location. Finance and Risk Management Committee (FRMC) Members and members of the public may attend in person. Under certain circumstances, FRMC Members may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, Community Power provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when an FRMC Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

Note: Any member of the public may provide comments to the FRMC on any agenda item. When providing comments, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the FRMC as a whole through the Chair. Comments may be provided in one of the following manners:

1. Providing oral comments during the meeting. Anyone attending in person desiring to address the FRMC is asked to fill out a speaker's slip and present it to the Clerk of the Board. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting to clerkoftheboard@sdcommunitypower.org. Please

AGENDA – FINANCE AND RISK MANAGEMENT COMMITTEE – SAN DIEGO COMMUNITY POWER

indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the FRMC members. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the FRMC members, and be part of the public record.

If you have anything that you wish to be distributed to the FRMC, please provide it via clerkoftheboard@sdcommunitypower.org, who will distribute the information to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar <https://zoom.us/j/93476863568> Telephone (Audio Only) (669) 900-6833 or (253) 215-8782 | Webinar ID: 934 7686 3568

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

Opportunity for members of the public to address the FRMC on any items not on the agenda but within the jurisdiction of the FRMC. Members of the public may provide a comment in any manner described above.

CONSENT CALENDAR

1. Approve September 19, 2024, Meeting Minutes

Recommendation: Approve September 19, 2024, Meeting Minutes.

REGULAR AGENDA

2. Fiscal Year End 2023-24 Financial Audit Progress Report Presentation

Recommendation: Receive and File Fiscal Year End 2023-24 Financial Audit Progress Report Presentation.

3. Review of Treasurer's Report for Period Ending July 31, 2024

Recommendation: Receive and File Treasurer's Report for Period Ending July 31, 2024

4. Recommend Board Approval of Resolution No. 2024-08, authorizing execution of an Energy Prepayment Transaction and related documents and 'form of' documents subject to maximum issuance amount and minimum savings parameters

Recommendation: Recommend Board Approval to Adopt Resolution No. 2024-08 approving parameters under which an energy prepayment transaction can be completed; authorizing and/or approving documents or "form of" documents supporting the prepay transaction; and directing California Community Choice Financing Authority (CCCFA) to make payments to service providers for issuance costs from prepay bond proceeds.

5. Recommend Board Approval of Amendment to the Revolving Credit Agreement with JP Morgan to Increase the Credit Facility from \$150,000,000 to \$250,000,000

Recommendation: Recommend SDCP Board of Directors approval to authorize the Chief Financial Officer or Chief Executive Officer to execute an amendment to the revolving credit agreement and related documents necessary to implement an increase to the existing line of credit from \$150,000,000 to \$250,000,000 from a JP Morgan credit facility

Committee Member Announcements

FRMC Members may briefly provide information to other members and the public. There is to be no discussion or action taken on comments made by FRMC Members unless authorized by law.

ADJOURNMENT

The Finance and Risk Management Committee will adjourn to the next regular meeting scheduled on November 14, 2024, at the City of Imperial Beach Council Chambers.

Compliance with the Americans with Disabilities Act

Community Power Committee meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to

participate in a public meeting may contact clerkoftheboard@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Committee Documents

Copies of the agenda and related materials are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to an agenda item, which are distributed to a majority of the Committee Members prior to or during the Committee meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at clerkoftheboard@sdcommunitypower.org or by mail to SD Community Power, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at Community Power's website. Such public records are also available for inspection by contacting clerkoftheboard@sdcommunitypower.org to arrange an appointment.



**FINANCE AND RISK MANAGEMENT COMMITTEE
SAN DIEGO COMMUNITY POWER (COMMUNITY POWER)**

City of Chula Vista
Council Chambers, 276 Fourth Avenue, Chula Vista, CA

**Regular Meeting Minutes
September 19, 2024**

The Committee minutes are prepared and ordered to correspond to the Committee Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair McCann called the Finance and Risk Management Committee meeting to order at 3:24 p.m.

ROLL CALL

PRESENT: Chair McCann, City of Chula Vista and Director Yamane, City of National City

ABSENT: Director Aguirre, City of Imperial Beach

Also Present: Chief Financial Officer/Treasurer Washington; General Counsel Tyagi; Clerk of the Board Hernandez; and Assistant Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Director Yamane led the Pledge of Allegiance.

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no items to be added, withdrawn, or reordered on the agenda.

PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no public comments.

CONSENT CALENDAR

1. Approve June 20, 2024, Meeting Minutes

There were no public comments on Consent Item No. 1.

Motioned by Chair McCann and seconded by Director Yamane to approve the minutes of the Finance and Risk Management Committee meeting held on Thursday, June 20, 2024. The motion carried unanimously by the following vote:

AYES:	Chair McCann and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Director Aguirre

REGULAR AGENDA

2. Review of Treasurer's Report for Period Ending June 30, 2024

Dr. Washington presented the Treasurer's Report for the period ending June 30, 2024.

There were no public comments on Item No. 2.

Committee members received and filed the Treasurer's Report for the period ending June 30, 2024.

3. Presentation and Update on Clean Energy Prepayment Financing

Mr. Washington and Managing Director, Mr. Mike Berwanger, PFM Financial Advisors LLC, provided a presentation and update on Clean Energy Prepayment Financing.

There were no public comments on Item No. 3.

Committee members received and filed update on Clean Energy Prepayment Financing.

4. Recommend Approval of Bond Issuer for Energy Prepayment Transaction

Mr. Washington provided an overview of Bond Issuer for Energy Prepayment Transaction and recommended Board Adoption of approving the selection of California Community Choice Financing Authority (CCCFA), a joint powers authority, as the Bond Issuer for a potential SD Community Power energy prepayment financing transaction and authorizing SD Community Power to join the CCCFA as an Associate Member.

There were no public comments on Item No. 4.

Following Committee questions and comments, the following action was taken:

Motioned by Director Yamane and seconded by Chair McCann to recommend Board Approval of Resolution No. 2024-06, adopting the Bond Issuer for Energy Prepayment Transaction. The motion carried unanimously by the following vote:

AYES:	Chair McCann and Director Yamane
NOES:	None
ABSTAINED:	None
ABSENT:	Director Aguirre

Committee Member Announcements

Chair McCann expressed appreciation to Finance, IT, City Clerk staff, and all members of Community Power for attending the meetings at the Chula Vista Council Chambers.

ADJOURNMENT

The Finance and Risk Management Committee meeting was adjourned at 3:45 p.m. to the next Finance and Risk Management Committee meeting scheduled on Thursday, October 17, 2024.

Sandra Vences, Assistant Clerk of the Board



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Finance and Risk Management Committee
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Fiscal Year End 2023-24 Financial Audit Progress Report Presentation
Date: October 17, 2024

RECOMMENDATION

Receive and File Fiscal Year End 2023-24 Financial Audit Progress Report Presentation.

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021.

Section 4.6.14 of the JPA specifies the Board of Directors (Board) shall arrange for an annual independent fiscal audit.

Section 5.4 of the JPA specifies the Board shall appoint a Treasurer who shall function as the combined offices of Treasurer and Auditor and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 6505.5 of the Act. The section further specifies that the Treasurer shall cause an independent audit(s) of the finances of Community Power to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

Section 7.2.2 of the JPA additionally specifies that the Community Power Board shall contract with a certified public accountant to make an annual audit of the financial statements of Community Power, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

On July 1, 2021, Community Power entered into a professional services agreement with Pisenti & Brinker to perform its annual audit for FY 2020-21. On July 1, 2022, Community Power exercised an option in the professional services agreement to extend the term from June 30, 2022, to June 30, 2023, to conduct its annual audit for FY 2021-22.

Subsequently, on July 20, 2023, Community Power exercised an option in the professional services agreement to extend the term from June 30, 2023, to June 30, 2024, to conduct its annual audit for FY 2022-23.

Later, on July 30, 2024, Community Power issued an invitation to bid from qualified and experienced professionals to provide independent financial statement auditing and additional as-needed services such as assisting with the preparation and reporting of audit findings to Community Power's Board. As a result of the invitation to bid, on September 1, 2024, Community Power entered into a professional services agreement with Pisenti & Brinker to perform its annual audit for FY 2023-24.

Pisenti & Brinker is a firm with extensive experience auditing CCA's throughout California, as well as other local government entities.

ANALYSIS AND DISCUSSION

Staff prepared a presentation describing the audit process and the preliminary results. The full financial audit report for FY 2023-24 is expected to be presented to the FRMC on November 14, 2024, and expected to be reviewed by the Board on November 21, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Finance and Risk Management Committee
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Treasurer's Report for Period Ending July 31, 2024
Date: October 17, 2024

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending July 31, 2024.

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared its year-to-date financial statements for the one-month period ended July 31, 2024, along with budgetary comparisons.

SDCP additionally reports monthly metrics during its Board meetings as part of its Update on Back-Office Operations. As part of the Treasurer's Report, certain key metrics related to risk are presented during Financial and Risk Management Committee (FRMC) meetings.

On June 27, 2024, the SDCP Board of Directors (Board) approved an operating budget for Fiscal Year 2024-25 that included net operating revenues of \$1,177,925,889 total expenses of \$1,143,919,262 and a resulting net position of \$34,006,627. The budget also included \$16,434,280 to fund 16 additional projects, totaling 23 active projects for the agency.

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 7/31/24: \$167.4 million in net operating revenues were reported compared to \$145.6 million budgeted for the period. \$120.9 million in total expenses were reported (including \$103.4 million in energy costs) compared to \$111.1 million budgeted for the period (including \$90.7 million budgeted for energy costs). After expenses, SDCP's change in net position of \$46.5 million was

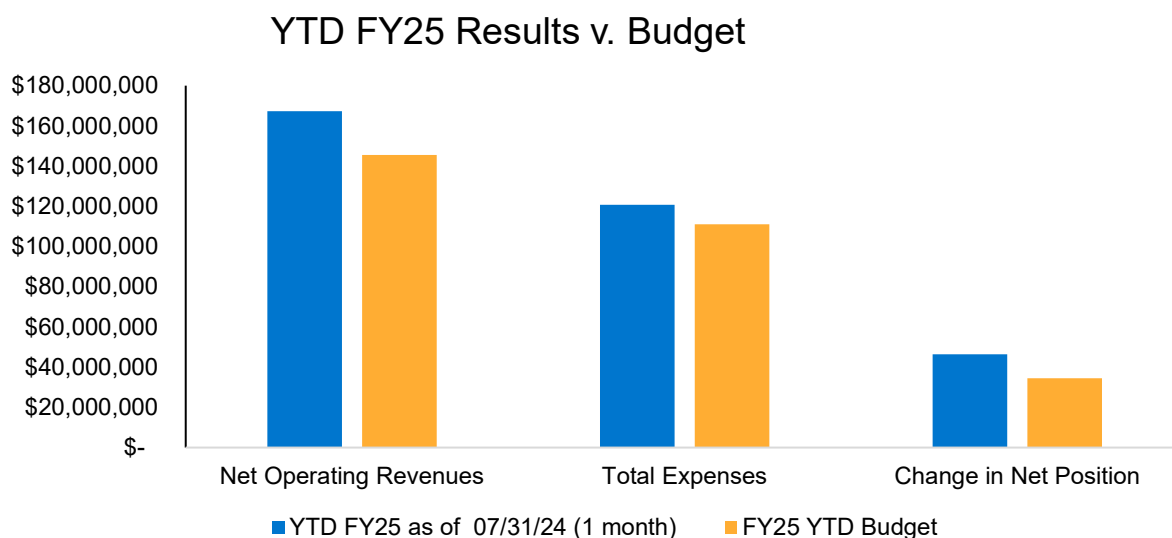
reported year-to-date for Fiscal Year 2024-25. The following is a summary of the actual results compared to the Fiscal Year 2024-25 Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison					
	YTD FY25 as of 07/31/24 (1 month)	FY25 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 167,360,408	\$ 145,579,846	\$ 21,780,562	115%	
Total Expenses	\$ 120,864,755	\$ 111,096,293	\$ 9,768,462	109%	
Change in Net Position	\$ 46,495,653	\$ 34,483,553	\$ 12,012,100	35%	

- Net operating revenues finished \$21.8 million (or 15.0 percentage points) over the budget primarily due to higher-than-expected customer load related to warmer weather.
- Operating expenses finished \$9.8 million (or 9.0 percentage points) over budget also due to higher-than-expected customer energy demand driven by warmer than expected temperatures.

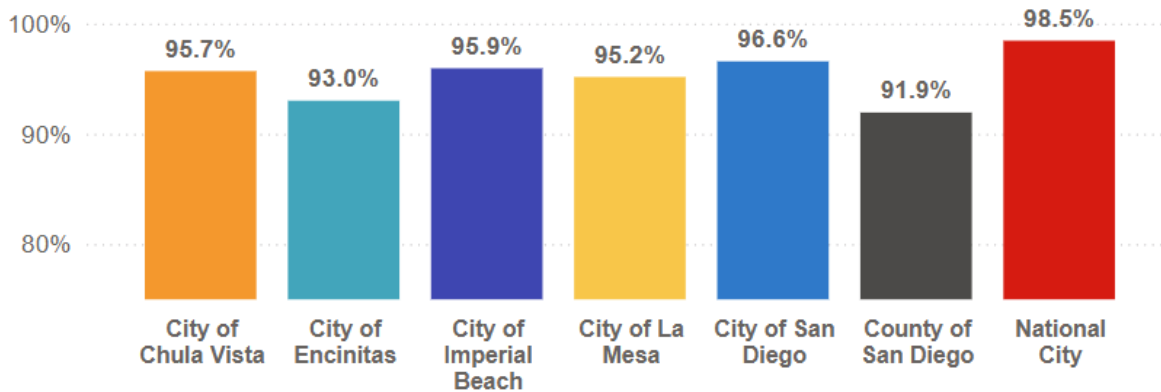
Figure 1: Budget versus Actual Results



For the one-month period ending 7/31/24, SDCP contributed \$46,495,653 to its net position compared to the expected contribution of \$34,483,553 when compared to the Fiscal Year 2024-25 budget. Total SDCP reserves at the end of the period were \$296,068,307 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$408,568,307. SDCP has a Fiscal Year End 2024-25 reserve target of \$556,027,397 which is equivalent to 180-days of total operating expenses as set in SDCP's Reserve Policy and Strategic Goals.

Figure 2: Participation Rates as of October 2024

Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,604	94,359	95.7%
City of Encinitas	Power100	28,564	26,568	93.0%
City of Imperial Beach	PowerOn	10,909	10,467	95.9%
City of La Mesa	PowerOn	29,432	28,008	95.2%
City of San Diego	PowerOn	623,466	602,131	96.6%
County of San Diego	PowerOn	190,112	174,787	91.9%
National City	PowerOn	19,469	19,168	98.5%
Total		1,000,556	955,488	95.5%

The Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. The participation rate for SDCP reflects full enrollment of current member agencies. We are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting the state of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The arrearage data below includes SDCP's Receivables aged 120+ Days as of 7/1/2024.

Figure 3: State of SDCP Arrearages as of October 2024

Balances over 120 days

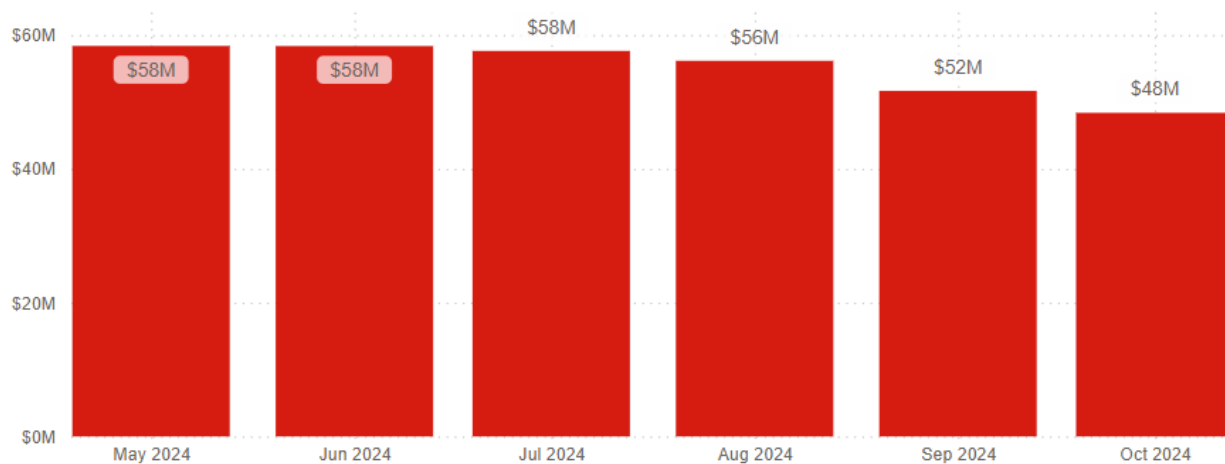
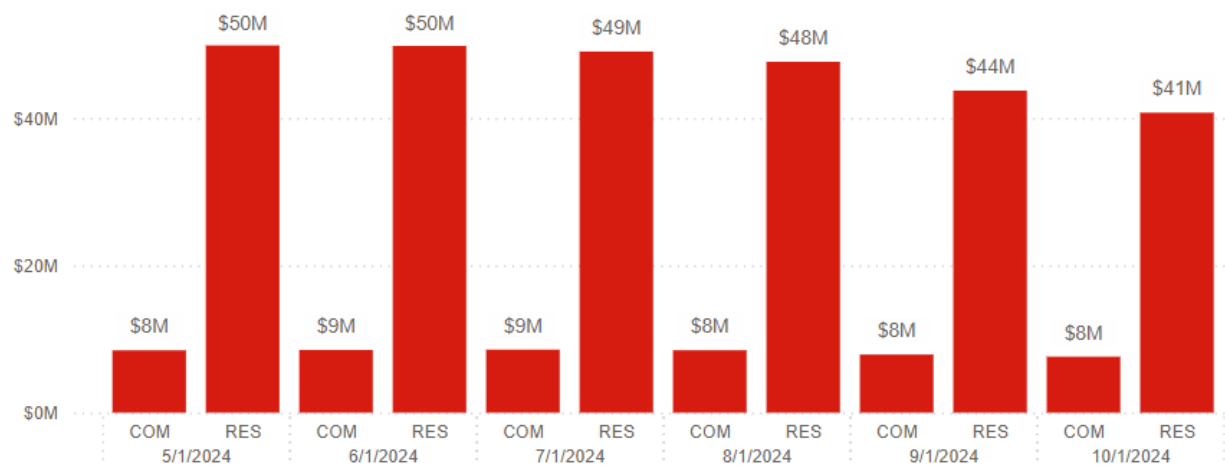


Figure 4: State of SDCP Arrearages Residential vs Commercial as of October 2024

Balances over 120 days - RES vs COM



COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2024 Year-to-Date Period Ended July 31, 2024 Financial Statements



ITEM 3

ATTACHMENT A



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of July 31, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. San Diego Community Power's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
September 24, 2024

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of July 31, 2024

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 296,068,307
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	153,910,501
Accrued revenue	90,119,856
Prepaid expenses	50,041,144
Other receivables	84,064
Deposits	12,521,116
Investments	191,328
Total current assets	<u>603,436,316</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Investments	9,037,548
Capital assets, net of depreciation and amortization	717,140
Total noncurrent assets	<u>10,901,688</u>
Total assets	<u><u>614,338,004</u></u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	164,329,505
Accounts payable	2,493,429
Other accrued liabilities	1,266,250
State surcharges payable	231,351
Deposits - energy suppliers	4,055,000
Lease liabilities	584,642
Total current liabilities	<u>172,960,177</u>
Noncurrent liabilities	
Deposits - energy suppliers	624,000
Lease liabilities	137,622
Total noncurrent liabilities	<u>761,622</u>
Total liabilities	<u><u>173,721,799</u></u>

NET POSITION

Restricted for security collateral	1,647,000
Unrestricted	438,969,205
Total net position	<u><u>\$ 440,616,205</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
One Month Ended July 31, 2024

OPERATING REVENUES

Electricity sales, net	\$ 167,161,964
Grant revenue	176,250
Other income	22,194
Total operating revenues	<u>167,360,408</u>

OPERATING EXPENSES

Cost of electricity	103,387,813
Contract services	1,592,576
Staff compensation	1,092,652
Other operating expenses	290,920
Depreciation and amortization	42,705
Total operating expenses	<u>106,406,666</u>
Operating income	<u>60,953,742</u>

NON-OPERATING REVENUES (EXPENSES)

Investment income	814,924
Interest and financing expense	(98,258)
Nonoperating revenues (expenses), net	<u>716,666</u>

CHANGE IN NET POSITION

	61,670,408
Net position at beginning of year	378,945,797
Net position at end of year	<u><u>\$ 440,616,205</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
One Month Ended July 31, 2024

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 103,738,546
Receipts from wholesale sales	22,297,081
Other operating receipts	176,250
Payments to suppliers for electricity	(115,592,259)
Payments for goods and services	(4,416,922)
Payments for staff compensation and benefits	(1,082,028)
Payments of state surcharges	(528,942)
Net cash provided by operating activities	<u>4,591,726</u>

**CASH FLOWS FROM CAPITAL AND RELATED
FINANCING ACTIVITIES**

Payments of lease liabilities	(51,390)
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CASH FLOWS FROM INVESTING ACTIVITIES

Investment income received	921,112
Purchase of investments	(9,188,251)
Net cash provided (used) by investing activities	<u>(8,267,139)</u>

Net change in cash and cash equivalents	(3,726,803)
Cash and cash equivalents at beginning of year	<u>301,442,110</u>
Cash and cash equivalents at end of year	<u><u>\$ 297,715,307</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 296,068,307
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	<u><u>\$ 297,715,307</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
One Month Ended July 31, 2024

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 60,953,742
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	42,705
(Increase) decrease in:	
Accounts receivable, net	(50,398,336)
Accrued revenue	(13,256,433)
Prepaid expenses	(15,022,744)
Other receivables	5,657,981
Deposits	(358,917)
Increase (decrease) in:	
Accrued cost of electricity	19,776,605
Accounts payable	(2,233,166)
Other accrued liabilities	(272,119)
State surcharges payable	(297,591)
Net cash provided by operating activities	<u><u>\$ 4,591,726</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended July 31, 2024, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. SDCP's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to SDCP because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
September 24, 2024

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
One Month Ended July 31, 2024**

	2024/25 YTD Budget	2024/25 YTD Actual	2024/25 YTD Budget Variance (Under) Over	2024/25 YTD Actual/ Budget %	2024/25 Annual Budget	2024/25 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	152,439,629	\$ 170,139,404	17,699,775	112%	\$ 1,233,400,000	\$ 1,063,260,596
Less: Uncollectible Customer Accounts	(6,859,783)	(2,977,440)	3,882,343	43%	(55,500,000)	(52,522,560)
Grant Revenue	-	176,250	176,250		-	(176,250)
Other Income		22,194	22,194		-	(22,194)
Total Revenues and Other Sources	<u>145,579,846</u>	<u>167,360,408</u>	<u>21,780,562</u>		<u>1,177,900,000</u>	<u>1,010,539,592</u>
OPERATING EXPENSES						
Cost of Energy	90,728,197	103,387,813	12,659,616	114%	1,073,700,000	970,312,187
Professional Services and Consultants	2,064,103	1,507,073	(557,030)	73%	24,800,000	23,292,927
Personnel Costs	1,643,297	1,092,652	(550,645)	66%	18,600,000	17,507,348
Marketing and Outreach	264,146	205,731	(58,415)	78%	3,000,000	2,794,269
General and Administration	1,090,217	192,639	(897,578)	18%	7,400,000	7,207,361
Total Operating Expenses	<u>95,789,960</u>	<u>106,385,908</u>	<u>10,595,948</u>		<u>1,127,500,000</u>	<u>1,021,114,092</u>
Operating Income (Loss)	<u>49,789,886</u>	<u>60,974,500</u>	<u>11,184,614</u>		<u>50,400,000</u>	<u>(10,574,500)</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	814,924	814,924		-	(814,924)
Interest and Related Expenses	(106,333)	(93,771)	12,562	88%	(1,300,000)	(1,206,229)
Transfer to Capital Investment Program	(15,200,000)	(15,200,000)	-	100%	(15,200,000)	-
Total Non-Operating Revenues (Expenses)	<u>(15,306,333)</u>	<u>(14,478,847)</u>	<u>827,486</u>		<u>(16,500,000)</u>	<u>(2,021,153)</u>
NET CHANGE	<u>\$ 34,483,553</u>	<u>\$ 46,495,653</u>	<u>\$ 12,012,100</u>		<u>\$ 33,900,000</u>	<u>\$ (12,595,653)</u>

**SAN DIEGO COMMUNITY POWER
CAPITAL INVESTMENT PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
One Month Ended July 31, 2024**

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Budget Remaining</u>
REVENUES AND OTHER SOURCES			
Transfer in from Operating Fund	<u>\$ 15,200,000</u>	<u>\$ 15,200,000</u>	<u>\$ -</u>
 EXPENDITURES AND OTHER USES			
Program expenditures (CIP)	<u>16,400,000</u>	<u>32,385</u>	<u>(16,367,615)</u>
Net increase (decrease) in fund balance	<u><u>\$ (1,200,000)</u></u>	15,167,615	
Fund balance at beginning of period		<u>3,807,281</u>	
Fund balance at end of period		<u><u>\$ 18,974,896</u></u>	



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Finance and Risk Management Committee

From: Eric Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Recommend Board Approval of Resolution No. 2024-08, Authorizing Execution of an Energy Prepayment Transaction, Related Documents, and 'Form of' Documents Subject to Maximum Issuance Amount, Limitation on Fees, and Minimum Required Savings

Date: October 17, 2024

RECOMMENDATION

Recommend Board adoption of Resolution No. 2024-08, approving parameters under which an energy prepayment transaction can be completed; authorizing and approving documents or "form of" documents supporting the prepay transaction; and directing California Community Choice Financing Authority (CCCFA) to make payments to service providers for issuance costs from prepay bond proceeds.

BACKGROUND

On October 1, 2019, the founding members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA), amended and restated on December 16, 2021.

Section 3.2.12 of the JPA specifies that the Community Power Board of Directors (Board) may, at its discretion, adopt rules, regulations, policies, bylaws, and procedures governing the operation of Community Power.

Further, section 3.2.7 of the JPA states that Community Power at the discretion of the Board may incur debts, liabilities, and obligations, including but not limited to loans from private lending sources under its temporary borrowing powers authorized by law under Government Code Section 53850 et seq. and authority under the Act.

Finally, section 3.2.8 of the JPA states that Community Power, at the discretion of the Board, may issue revenue bonds and other forms of indebtedness and, per section 3.2.9,

may apply for, accept, and receive all licenses, permits, grants, loans, or other aids from any federal, state, or local public agency.

Municipal electric, gas utilities, and tax-exempt entities such as community choice aggregators (CCAs) in the United States (US) can prepay for a supply of electricity or natural gas from a taxable (corporate) entity and fund that prepayment with tax-exempt municipal bonds. These entities must sell that commodity to retail end-users within their traditional service area.

Prepayment transactions are legal and codified in US Tax Law. Since the first natural gas prepayments were made in the early 1990s, the Internal Revenue Service (IRS) issued rules allowing tax-exempt prepayments, and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327).

Since then, over 90 municipal prepayment transactions totaling over \$50 billion have been completed in the US—over 95% of these were for natural gas, which is easier to “prepay” because the commodity is homogenous and easy to store.

Prepayments have saved utility ratepayers (natural gas, electricity from gas-fired power plants, and energy from renewable power projects) billions of dollars in reduced rates and energy charges and are anticipated to continue to do so over the 30-year life of the transactions.

On November 7, 2023, Community Power requested bids from qualified and experienced firms to provide a full range of municipal advisory services necessary for Community Power to evaluate, structure, and execute prepayment transactions. Shortly after, on December 18, 2023, Community Power agreed with PFM Financial Advisors LLC (PFM) to provide these services.

Next, on February 15, 2024, the Finance and Risk Management Committee received a Clean Energy Prepayment Financing Presentation. It discussed Community Power’s interest in pursuing a prepayment transaction, given the potential savings it can generate. Subsequently, on February 22, 2024, the Board received a similar Presentation on Clean Energy Prepayment Financing.

Then, on April 19, 2024, Community Power issued two requests for proposals (RFPs) for the prepaid transaction for legal services related to bond, tax, and disclosure counsel and for underwriter services to structure an energy prepayment program. These services are critical to completing a prepayment transaction.

On August 22, 2024, the Community Power Board of Directors approved Chapman and Cutler LLP to facilitate the capacity of Disclosure Counsel services.

Through the RFPs issued on April 19, 2024, Community Power also recommended Orrick, Herrington & Sutcliffe LLP to facilitate the capacity of Tax and Bond Counsel services. This agreement would be directly with the Bond Issuer.

On September 26, 2024, the Community Power Board of Directors approved the California Community Choice Finance Financing Authority (CCCFA) as an associate member and the conduit issuer of prepaid bonds on Community Power's behalf.

On October 11, 2024, the CCCFA Board of Directors admitted Community Power as an associate member during a special meeting.

ANALYSIS AND DISCUSSION

TIMELINE

Staff is providing an update and presentation to the Board on the current timeline for a potential clean prepayment financing. Below is a draft timeline, which is subject to change.

- **Nov 7, 2023:** RFP was issued for Municipal Financial Advisor (MFA)
- **Dec 28, 2023:** PFM was selected as MFA
- **Feb 15, 2024:** FRMC Prepaid Financing Presentation
- **Feb 22, 2024:** Board Presentation Prepaid Financing Presentation
- **Apr 19, 2024:** RFP issued for underwriter and legal services (bond, tax, disclosure)
- **Aug 22, 2024:** Legal counsel agreement with Chapman & Cutler for disclosure services approved
- **Sep 19, 2024:** FRMC – Presentation and potential recommendation for Board approval of Resolution for Bond Issuer
- **Sep 26, 2024:** Board – Presentation and approval of Resolution for Bond Issuer, California Community Choice Financing Authority (CCCFA)
- **Oct 11, 2023:** CCCFA board approves SDCP as an associate member
- **Oct 17, 2024:** FRMC – Presentation and potential recommendation for Board approval on prepay Resolution to authorize prepay transaction parameters and documents
- **Oct 24, 2024:** Board – Presentation and potential recommendation for Board approval on prepay Resolution to authorize prepay transaction parameters and documents
- **Nov 7, 2024:** Execute prepaid agreement and Bond pricing (bond pricing date subject to change based on market conditions)
- **Nov 19, 2024:** Estimated closing date is an estimate (subject to change based on market conditions)

REQUESTED ACTION

The proposed Board Resolution No. 2024-08 encompasses the following approvals or authorizations relating to the execution of the prepay transaction:

- Defines the parameters under which the prepay transaction can be completed;
- Authorizes staff to execute or approve for distribution documents and “form of” documents supporting the prepay transaction and

The proposed Board Resolution will allow staff to act nimbly when market conditions are advantageous for issuing the prepay bonds.

PARAMETERS

Board Resolution No. 2024-08 specifies parameters that must be satisfied to execute the prepay transaction. Those parameters are:

- That the aggregate bond principal will not exceed \$1.5 billion. The final size of the transaction will be determined at the initial pricing date of the bonds in response to market conditions;
- That the minimum “Prepaid Discount” shall be at least 8%. This establishes the minimum cost savings;
- That the fees of the transaction will not exceed 1% of the bond issuance amount.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

CCCFA will pay the cost of bond issuance out of bond proceeds, not exceeding 1% of the issuance. Community Power will not pay these costs. Accordingly, Community Power’s operating expense budget will have no fiscal impact. As a result of the prepay transaction, Community Power expects to realize \$2.6 million to \$3.3 million in annual savings on its energy costs.

The amount of the discount is dependent on market conditions. Community Power staff will work with the underwriter, Morgan Stanley, and its financial advisor, PFM, to determine the optimal time to market the bonds. SDGP is targeting savings of 8-10%.

ATTACHMENTS

1. Resolution No. 2024-08 of the Board of Directors of San Diego Community Power Authorizing the Execution and Delivery of a Power Supply Contract and Certain Other Documents in Connection with the Issuance of California Community Choice Financing Authority (CCCFA) Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith.
 - Exhibit A:
 - Power Supply Contract between San Diego Community Power and the Issuer;
 - Custodial Agreement by and among San Diego Community Power, the Issuer, MSCG, the Prepaid Supplier, and a custodial bank to be named therein;
 - Form of Limited Assignment Agreement, by and among San Diego Community Power, the counterparty to the power purchase agreement described therein, and MSCG;
 - Letter Agreement by and among San Diego Community Power, the Prepaid Supplier, and MSCG regarding matters relating to Assignment Agreements;
 - Prepaid Energy Project Administration Agreement relating to the Project, by and between San Diego Community Power and the Issuer; and
 - Memorandum of Understanding between San Diego Community Power and the Issuer indemnifying the Issuer against specific rating fees.
 - Exhibit B:
 - Appendix A to the Preliminary Official Statement

ITEM 4

ATTACHMENT 1

RESOLUTION NO. 2024-08

RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (CCCFA) CLEAN ENERGY PROJECT REVENUE BONDS; AND CERTAIN OTHER ACTIONS REQUIRED TO ENSURE THE REDUCTION IN THE COSTS OF RENEWABLE ENERGY THEREWITH.

THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS, San Diego Community Power (“**San Diego Community Power**” or “**SDCP**”) was formed on October 1, 2019, under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 *et seq.* (the “**JPA Law**”);

WHEREAS, San Diego Community Power is duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage;

WHEREAS, San Diego Community Power is a community choice aggregator (as defined in Section 331.1 of the Public Utilities Code of the State of California (the “**Public Utilities Code**”), and is a public agency (as defined in the JPA Law) that has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes;

WHEREAS, San Diego Community Power, acting pursuant to the JPA Law, may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers;

WHEREAS, pursuant to the provisions of the JPA Law, San Diego Community Power joined certain other California community choice aggregators by entering into the joint powers agreement (the “**Joint Powers Agreement**”) pursuant to which the CCCFA (the “**Issuer**”) was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist community choice aggregators, including San Diego Community Power, in financing the acquisition of supplies of clean energy;

WHEREAS, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

WHEREAS, San Diego Community Power has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer pursuant to a clean energy prepayment transaction (the “**Prepayment Transaction**”);

WHEREAS, San Diego Community Power has determined to authorize pursuant to this Resolution the undertaking of a Prepayment Transaction with the Prepaid Supplier (defined below) ;

WHEREAS, in connection with the foregoing, San Diego Community Power is requesting the Issuer to agree to purchase on a prepaid basis certain quantities of clean energy from a Delaware limited liability company (the “**Prepaid Supplier**”) the sole member of which is Morgan Stanley Capital Group Inc., a Delaware corporation (“**MSCG**”) and to sell such clean energy to San Diego Community Power, as contemplated herein (the “**Project**”);

WHEREAS, San Diego Community Power is requesting that the Issuer finance the costs of the Project with the proceeds of its clean energy project revenue bonds, with a Series designation determined by the Issuer based on the timing and sequence of issuance (the “**Bonds**”);

WHEREAS, San Diego Community Power has determined to authorize the representatives of San Diego Community Power to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

WHEREAS, there have been submitted to this meeting for approval forms of the following agreements to which San Diego Community Power is a party (collectively, the “**SDCP Documents**”):

1. Power Supply Contract between San Diego Community Power and the Issuer;
2. Custodial Agreement by and among San Diego Community Power, the Issuer, MSCG, the Prepaid Supplier and a custodial bank to be named therein;
3. Form of Limited Assignment Agreement, by and among San Diego Community Power, the counterparty to the power purchase agreement described therein, and MSCG;
4. Letter Agreement by and among San Diego Community Power, the Prepaid Supplier and MSCG regarding matters relating to Assignment Agreements;
5. Prepaid Energy Project Administration Agreement relating to the Project, by and between San Diego Community Power and the Issuer; and
6. Memorandum of Understanding between San Diego Community Power and the Issuer indemnifying Issuer against certain ratings fees.

WHEREAS, there have also been submitted to this meeting forms of the following additional documents relating to the Project:

1. Appendix A to the Preliminary Official Statement to be used in connection with the offering and sale of the Bonds (together with the SDCP Documents, the “**Project Documents**”);

NOW, THEREFORE, IT IS HEREBY DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE SAN DIEGO COMMUNITY POWER as follows:

Section 1. AUTHORIZED REPRESENTATIVES. The following named individuals are the authorized representatives of San Diego Community Power with the respective titles specified below (collectively referred to as “**Authorized Representatives**” and individually referred to as an “**Authorized Representative**”):

<u>NAMES</u>	<u>TITLES</u>
Joe LaCava	Chair of the Board
Karin Burns	Chief Executive Officer
Eric Washington	Chief Financial Officer
Jack Clark	Chief Operating Officer
Byron Vosburg	Chief Commercial Officer
Veera Tyagi	General Counsel

Section 2. SDCP Documents. The proposed forms of the SDCP Documents, attached hereto as Exhibit A, are hereby approved. The form of Limited Assignment Agreement may be used, in a substantially similar form, for assignments of the initial or any additional SDCP power purchase agreements, as needed to maintain the transactions approved hereby, and any such Limited Assignment Agreements shall be included in the SDCP Documents are hereby approved. Subject to the parameters set forth in Section 5 of this Resolution, any Authorized Representative is hereby authorized and directed, for and on behalf of San Diego Community Power, to execute and deliver the SDCP Documents in substantially similar form, with such changes and insertions therein as the Authorized Representatives executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Appendix A to the Preliminary Official Statement. Appendix A to the Preliminary Official Statement is hereby approved. Any Authorized Representative is hereby authorized and directed, for and on behalf of San Diego Community Power, to execute and deliver a certificate as to the information regarding San Diego Community Power contained in such Appendix A, with such changes and insertions therein as the Authorized Representative approving the same may deem necessary or appropriate. San Diego Community Power hereby authorizes the inclusion of such Appendix A in the Preliminary Official Statement and the final Official Statement, in each case with such changes as may be approved as aforesaid.

Section 4. Actions Authorized. The Authorized Representatives, each acting alone, are hereby authorized and directed, for and in the name and on behalf of San Diego Community Power, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which San Diego Community Power has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by San Diego Community Power the transactions contemplated by the Power Supply Contract for the Project, the SDCP Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent

amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 5. Transaction Parameters. The approvals provided for herein shall be subject to the following parameters:

(a) the Bonds will not be obligations of San Diego Community Power, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged thereto, including amounts payable by San Diego Community Power under the Power Supply Contract;

(b) the aggregate principal amount of the related Series of Bonds shall not exceed \$1,500,000,000;

(c) the “Monthly Discount” and “Minimum Discount” as provided for in the Power Supply Contract for the Project shall be at least 8% of the fixed cash flows or equivalent \$ per MWh; and

(d) CCCFA total cost of issuance including all underwriting, legal and consultant fees for the Project will not exceed 1.00% of the amount of the proceeds of the Bonds issued by CCCFA with respect to such Project.

Section 6. Execution and delivery of the SDCP Documents by an Authorized Representative shall be conclusive evidence that the parameters set forth in Section 5 have been met, and all actions heretofore taken by the Authorized Representatives with respect to the issuance of the Bonds are hereby ratified, confirmed, and approved.

Section 7. If Section 5 and Section 6 listed herein have been met, an Authorized Representative may direct CCCFA to make payments to vendors that provided professional services to SDCP to complete the SDCP Documents and ultimately the issuance of the Bonds with respect to the Project. These professional services include legal counsel, bond counsel, tax counsel, municipal financial advisor, swap advisor, trustee and trustee counsel, underwriter of the bonds, underwriter’s counsel, and any other vendor required to complete the issuance of the Bonds. Payment to these vendors is considered a cost of issuance and will be paid by CCCFA out of the proceeds of the sale of the Bonds.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for San Diego Community Power, as the case may be. This Resolution now stands of record on the books of San Diego Community Power, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that this Resolution shall take effect upon its passage, shall be continuing and shall remain in full force and effect unless and until expressly revoked by further resolution of the Board of Directors.

ADOPTED AND APPROVED this ____ day of _____ 2024.

Joe LaCava
Chair of the Board of Directors

ATTEST:

Maricela Hernandez,
Secretary to the Board of Directors
Clerk of the Board
San Diego Community Power

APPROVED AS TO FORM:

Veera Tyagi, General Counsel
San Diego Community Power

EXHIBIT A

SDCP Documents

(see attached)

EXHIBIT A1

POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

SAN DIEGO COMMUNITY POWER

Dated as of [____], 2024

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Exhibit A-3 -	Annual Quantity
Exhibit B -	Notices
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Exhibit D -	Form of Federal Tax Certificate
Exhibit E -	Form of Opinion of Counsel to Purchaser
Exhibit F -	Monthly Discount
Exhibit G -	Form of Closing Certificate
Exhibit H -	Form of Remediation Certificate

POWER SUPPLY CONTRACT

This Power Supply Contract (hereinafter “Agreement”) is made and entered into as of [____], 2024 (the “Execution Date”), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 *et seq.* of the California Government Code, as amended) (“Issuer”) and San Diego Community Power, a California joint powers authority (“Purchaser”).

W I T N E S S E T H:

WHEREAS, Issuer has planned and developed a project to acquire long-term Energy supplies from Energy Prepay [____], LLC (“Prepay LLC”) pursuant to a Prepaid Energy Sales Agreement (as amended, restated, supplemented or otherwise modified from time to time, the “Prepaid Agreement”) to meet a portion of the Energy supply requirements of Purchaser through an energy prepayment project (the “Clean Energy Project”); and

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

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

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

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

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

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Issuer and Purchaser (the “Parties” hereto; each is a “Party”) agree as follows:

ARTICLE I DEFINITIONS

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

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

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

“Annual Quantity” means, with respect to each Contract Year of the Delivery Period, the quantity (in MWh) of Assigned Product for such Contract Year as set forth on Exhibit A-3; provided that the Annual Quantity for any Contract Year shall be reduced by the aggregate amount of any quantities of Base Energy required to be remarketed under this Agreement for any given Contract Year.

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

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

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

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

“Assigned Paygo Quantity” means any Assigned Products delivered under this Agreement in excess of the Annual Quantity for any Contract Year.

“Assigned Product” means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

“Assigned RECs” means any RECs to be delivered to MSCG or Prepay LLC pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” means a portion of Purchaser’s rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

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

“Assignment Letter Agreement” means that certain Letter Agreement, dated as of [the date hereof], by and among MSCG, Prepay LLC, Issuer and Purchaser.

“Assignment Period” has the meaning specified in the applicable Assignment Agreement.

“Available Discount” means, for each Reset Period, the amount, expressed in cents per MWh (rounded down to the nearest one-half cent), determined by the Calculation Agent pursuant to the Re-Pricing Agreement for such Reset Period. The Available Discount shall equal the sum of the Monthly Discount and any anticipated Annual Refunds for the applicable Reset Period.

“Balancing Authority” has the meaning specified in the CAISO Tariff.

“Base Energy” means Firm (LD) Energy.

“Billing Date” has the meaning specified in Section 14.1(b).

“Billing Statement” has the meaning specified in Section 14.1(b).

“Bond Closing Date” means the first date on which the Bonds are issued pursuant to the Bond Indenture.

“Bond Indenture” means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Issuer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Issuer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

“Bonds” means the bonds issued pursuant to the Bond Indenture.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

“CAISO” means California Independent System Operator or its successor.

“CAISO Tariff” means CAISO’s FERC-approved tariff, as modified, amended or supplemented from time to time.

“Calculation Agent” has the meaning specified in the Re-Pricing Agreement.

“California Long-Term Contracting Requirements” means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

“CCA Revenues” means all charges received for, and all other income and receipts derived by Purchaser from, the operation of its CCA System, including income derived from the sale of electric energy by its CCA System.

“CCA System” means Purchaser’s community choice aggregation program that provides electric energy supply service to retail customers located within its service area.

“Claiming Party” has the meaning specified in Section 11.1.

“Claims” means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Clean Energy Project” has the meaning specified in the recitals.

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

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

“Contract Price” means (i) with respect to Monthly Projected Quantities, (A) [the Day-Ahead Market Price for each Hourly interval during the Initial EPS Energy Period]¹ and the Day-Ahead Average Price during any other EPS Energy Period, minus in each case (B) the Monthly Discount; and (ii) with respect to Monthly Excess Quantities and Assigned Paygo Quantities, the Day-Ahead Market Price during the Initial EPS Energy Period and the Day-Ahead Average Price during any other EPS Energy Period. For the avoidance of doubt, the Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

“Contract Quantity” means (i) with respect to Assigned Energy, the Annual Quantity of Assigned Energy for each Contract Year of the Delivery Period; and (ii) with respect

¹ NTD: Subject to confirmation of pricing terms under Initial Assigned PPA.

to Base Energy, the Hourly Quantity of Base Energy set forth in Exhibit A-1 for any Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.

“Contract Year” means each period of 12 Months from [] 1 until [] [31] during the Delivery Period.

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

“Day-Ahead Market Price” means The Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules.

“Default Rate” means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the “Money Rates” section as the “Prime Rate” for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

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

“Delivery Period” means the period beginning on [] 1, 2024 and ending on [], 20[]; provided that the Delivery Period shall end immediately upon the effective termination date of the Prepaid Agreement or early termination of this Agreement pursuant to Article XVII hereof.

“Delivery Point” means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A-1 and A-2).

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

“Energy Delivery Point” has the meaning specified in Exhibit A-1.

“EPS” means California’s Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“EPS Compliant Energy” means Energy that Purchaser can contract for and purchase in compliance with EPS requirements that are applicable to Purchaser.

“EPS Energy Period” means the Initial EPS Energy Period and any subsequent Assignment Period established by a future assignment of a power purchase agreement consistent with the Assignment Letter Agreement.

“Execution Date” has the meaning specified in the preamble.

“Federal Tax Certificate” means the executed Federal Tax Certificate delivered by Purchaser in the form attached as Exhibit D.

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Firm (LD)” means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Purchaser’s markets; (ii) Purchaser’s inability economically to use or resell the Energy purchased hereunder; (iii) the loss or failure of Issuer’s supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Issuer’s ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (b) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; *provided*, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) any invocation of Force Majeure by Prepay LLC under the Prepaid Agreement shall constitute Force Majeure in respect of Issuer hereunder; (II) to the extent that (x) a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver or (y) a PPA Supplier otherwise is unable to deliver any portion of the Annual Quantity due to an event that would be considered Force Majeure under this Agreement if it affected Issuer directly, then such event shall be deemed to constitute Force Majeure in respect of Issuer hereunder; and (III) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Issuer until the earlier of (A) the commencement of an “Assignment Period” under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

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

“Hour” means each 60-minute period commencing at 00:00 PPT during the Delivery Period. The term “Hourly” shall be construed accordingly.

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

“Initial Assigned PPA” means that certain [____] dated as of [____], 2024 between the Initial PPA Supplier and Purchaser.

“Initial Assignment Agreement” means that certain Limited Assignment Agreement, dated as of [the date hereof], by and among Purchaser, [MSCG/Prepay LLC] and the Initial PPA Supplier.

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

“Initial PPA Supplier” means [____].

“Initial Reset Period” means the period beginning on [____] 1, 2024 and ending on [____], 20[____].

“Interest Rate Period” has the meaning specified in the Bond Indenture.

“Issuer” has the meaning specified in the preamble.

“Issuer Default” has the meaning specified in Section 17.1.

“Law” means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

“Long-Term PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, Prepay LLC or any successors thereto pursuant to any Assigned Rights and Obligations.

“Minimum Discount” means no less than \$[____] per MWh for each Reset Period after the Initial Reset Period. Such amount is inclusive of any projected Annual Refund.

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

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

“Monthly Excess Quantity” means, for any Month, the amount, if any, by which the total quantity (in MWh) of Assigned Product delivered under an Assigned PPA in such Month exceeds the Monthly Projected Quantity for such Assigned PPA for such Month.

“Monthly Projected Quantity” means, with respect to each Assigned PPA and each Month of the Assignment Period for each Assigned PPA, the quantity (in MWh) of Assigned Product for such Month as set forth on Exhibit A-2 for such Assigned PPA (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

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

“MWh” means megawatt-hour.

“Non-Priority Energy” means Energy that is not Priority Energy.

“Participant Custodial Agreement” means that certain Custodial Agreement, dated as of the Bond Closing Date, by and among Purchaser, Issuer, Prepay LLC, MSCG and the Participant Custodian.

“Participant Custodian” means [PARTICIPANT CUSTODIAN], a [].

“Party” has the meaning specified in the recitals.

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

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

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

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

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

“PPT” means Pacific Prevailing Time.

“Prepaid Agreement” has the meaning specified in the recitals.

“Prepay LLC” has the meaning specified in the recitals.

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

“Project Participant” has the meaning specified in the Bond Indenture.

“Purchaser” has the meaning specified in the preamble.

“Purchaser Default” has the meaning specified in Section 17.2.

“Purchaser’s Statement” has the meaning specified in Section 14.1(a).

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

“Rating Agency” has the meaning specified in the Bond Indenture.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Issuer and Prepay LLC.

“Remarketing Election Deadline” means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice, which shall be 4:00 p.m. PPT on the 10th day of the Month (or, if such day is not a Business Day, the next succeeding Business Day) prior to the first delivery Month of a Reset Period with respect to which a Potential Remarketing Event has occurred.

“Remarketing Election Notice” has the meaning specified in Section 3.4(b).

“Renewable Energy Credit” or “REC” has the meaning specified for “Renewable Energy Credit” in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Reset Period” means each “Reset Period” under the Re-Pricing Agreement.

“Reset Period Notice” has the meaning specified in Section 3.4(a).

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

“Transmission Provider(s)” means any entity or entities transmitting or transporting Energy on behalf of Issuer or Purchaser to or from the Delivery Point.

“Trustee” means [TRUSTEE], and its successors as Trustee under the Bond Indenture.

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

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

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

ARTICLE II

EXECUTION DATE AND DELIVERY PERIOD; NATURE OF CLEAN ENERGY PROJECT

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

Section 2.2 Termination Due to Failure to Issue Bonds. Each Party shall have a right to terminate this Agreement with the effect that this Agreement shall be of no further force or effect and the Parties shall have no rights or obligations hereunder if the Bonds are not issued on or before the [Prepayment Outside Date] (as defined in the Prepaid Agreement).

Section 2.3 Nature of Clean Energy Project. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Energy to Purchaser under this Agreement exclusively through its purchase of long-term supplies of Energy from Prepay LLC pursuant to the Clean Energy Project and that Issuer is financing its purchase of such long-term supplies through the issuance of the Bonds.

Section 2.4 Pledge of this Agreement. Purchaser acknowledges and agrees that Issuer will pledge its right, title, and interest under this Agreement and the revenues to be received under this Agreement to secure Issuer's obligations under the Bond Indenture.

ARTICLE III SALE AND PURCHASE

Section 3.1 Sale and Purchase of Energy. Issuer agrees to sell and deliver or cause to be delivered to Purchaser, and Purchaser agrees to purchase and take or cause to be taken from Issuer, in each case, on a Firm (LD) basis, the Contract Quantity of Energy pursuant to the terms and conditions set forth in this Agreement. The Parties acknowledge and agree that Issuer's delivery obligation for (i) Assigned Products will be measured on an annual basis and (ii) Base Energy will be measured on an Hourly basis, as reflected in the definition of Contract Quantity and further set forth in the terms of this Agreement.

Section 3.2 Payments.

(a) For each MWh of Assigned Product delivered to Purchaser, Purchaser shall pay Issuer the applicable Contract Price, provided that (x) Issuer shall owe a payment to Purchaser to the extent that the Contract Price for Energy delivered is negative and (y) Purchaser's payment of the [Retained Payment Amount] (as defined in the Participant Custodial Agreement) to the Participant Custodian consistent with the terms of the Participant Custodial Agreement shall satisfy Purchaser's obligations hereunder with respect to Monthly Excess Quantities and Assigned Paygo Quantities, as applicable.

(b) During the term of this Agreement, promptly following completion of the annual audit of Issuer's financial statements at the end of each fiscal year (currently the twelve-month period ending December 31), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Clean Energy Project for that fiscal year. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to Purchaser in the amount available after making allowances for any necessary and appropriate reserves and contingencies (including but not limited to amounts deemed reasonably necessary by Issuer to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or

other principal amortization of the Bonds. As of the Execution Date, the projected Annual Refund for the Initial Reset Period is \$[]² per MWh.

Section 3.3 No Obligation to Take Base Energy. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Energy hereunder, and Issuer shall cause Prepay LLC to remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement.

Section 3.4 Reset Period Remarketing.

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

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

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

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

² SM NTD: MS to provide.

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

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

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

ARTICLE IV FAILURE TO DELIVER OR TAKE ENERGY

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

ARTICLE V TRANSMISSION AND DELIVERY; COMMUNICATIONS

Section 5.1 Delivery of Energy. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of

the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Purchaser and Issuer shall have no liability or obligations under this Article V with respect to Assigned Product.

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

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

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

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

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

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

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

(e) Issuer Representations and Warranties.

Issuer represents and warrants:

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

Issuer further represents and warrants to Purchaser that, to the extent that the Product sold by Issuer is a resale of part or all of a contract between Issuer and one or more third parties, Issuer represents, warrants and covenants that the resale

complies with the following conditions in (i) through (iv) below during the Assignment Period and throughout the generation period:

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

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

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

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

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

of the applicable Energy into the applicable Balancing Authority shall constitute delivery of such Energy to Purchaser hereunder.

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

ARTICLE VI PARTIAL ASSIGNMENTS OF PPAS

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

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

(a) To the extent that an EPS Energy Period terminates early, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities and (ii) Exhibit A-2 to reflect a decrease in the Monthly Projected Quantities associated with the relevant Assigned PPA, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired. For the avoidance of doubt, any updates to Exhibits A-1 and A-2 due to an early termination of an EPS Energy Period shall be effective as of the earlier of (A) the commencement of an Assignment Period under a replacement Assignment Agreement or (B) the start of the third Month following the Month in which such early termination occurs.

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

ARTICLE VII USE OF ENERGY

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

Section 7.2 Priority Energy. Subject to Section 7.5(a), Purchaser agrees to take the Contract Quantities to be delivered under this Agreement (a) in priority over and in preference to

all Non-Priority Energy; and (b) on at least a *pari passu* and non-discriminatory basis with other Priority Energy.

Section 7.3 Remarketing Sales.

(a) Remarketing of Assigned Product. If notwithstanding Purchaser's compliance with Section 7.1, a quantity of Assigned Product less than the Annual Quantity is delivered hereunder in any Contract Year for any reason other than Force Majeure, then MSCG shall be deemed to remarket such undelivered quantity of Assigned Product consistent with [Section 5(a) of Exhibit C] to the Prepaid Agreement. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Assigned Energy that is remarketed pursuant to the foregoing sentence.

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

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

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

Section 7.5 Remediation. To the extent that (a) all or a portion of the Contract Quantity is remarketed under Section 7.3(a) or Section 7.3(b) and (b) Purchaser is not otherwise in default under this Agreement, then:

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

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

remediating such proceeds under any other contract that provides for the purchase of Priority Energy;

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

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

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

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX TAXES

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

ARTICLE X DISPUTE RESOLUTION

Section 10.1 Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Judicial Reference.

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

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

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two (2) referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall

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

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

(d) Discovery; Proceedings.

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

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

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

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

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

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

ARTICLE XI FORCE MAJEURE

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

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

ARTICLE XII GOVERNMENTAL RULES AND REGULATIONS

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

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any

Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance by either Party of this Agreement or any provision hereunder.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII ASSIGNMENT

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

ARTICLE XIV PAYMENTS

Section 14.1 Monthly Statements.

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

(b) No later than the 10th day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Issuer shall deliver a statement (a "Billing Statement") to Purchaser indicating (i) the total amount due to Issuer for Energy delivered in the prior Month, (ii)

any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Issuer or Purchaser; provided that invoicing for Monthly Excess Quantities and Assigned Paygo Quantities shall occur under the Participant Custodial Agreement. Additionally, if a [Participant Monthly Statement] (as defined in the Participant Custodial Agreement) for an [Assigned PPA] (as defined in the Participant Custodial Agreement) has not been delivered by the 10th day of the Month following deliveries, Issuer shall provisionally prepare or cause to be prepared a Billing Statement for this Agreement that assumes all of the Monthly Projected Quantities were delivered under the applicable Assigned PPA for such Month, and any subsequent resettlements required with respect thereto shall occur under the Participant Custodial Agreement.³

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

Section 14.2 Payment.

(a) If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to the Trustee for the benefit of the Issuer by wire transfer (pursuant to the Trustee's instructions for amounts due under this Agreement, provided that amounts due from Purchaser with respect to Monthly Excess Quantities and Assigned Paygo Quantities, as applicable, shall be paid pursuant to the terms of the Participant Custodial Agreement), in immediately available funds, on or before the 20th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser's instructions), in immediately available funds, on or before the 28th day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the following Business Day.

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

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

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

³ NTD: Parties to discuss invoicing process for Assigned PPAs.

withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

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

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

Section 14.5 Audit; Adjustments.

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

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

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

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV.

Notwithstanding the foregoing, payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

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

Section 14.8 Rate Covenant. Purchaser hereby covenants and agrees that it will establish, fix, prescribe, maintain, and collect rates, fees, and charges from the customers of its CCA System so as to provide CCA Revenues sufficient to enable Purchaser to pay any other amounts legally payable from CCA Revenues, and to maintain any required reserves for Purchaser's CCA System. Purchaser further covenants and agrees that it shall not furnish or supply Energy services free of charge to any Person, except any such service free of charge that Purchaser is supplying on the date hereof as has been specifically identified by Purchaser to Issuer in writing, and it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of Energy to its customers. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to make any payments hereunder except from CCA Revenues.

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

Section 14.10 Financial Responsibility. In the event the Issuer receives notice from Prepay LLC pursuant to [Section 2.12] of the Receivables Purchase Provisions that it requires adequate assurance of performance from the Issuer, Issuer shall provide notice thereof to Purchaser and Purchaser shall (a) notify the Issuer of its agreement to provide such adequate assurance within 48 Hours but at least one Business Day of Purchaser's receipt of such notice and (b) provide such adequate assurance to Issuer within 72 Hours but at least two Business Days of Purchaser's receipt of such notice. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Prepay LLC pursuant to [Section 2.12] of the Receivables Purchase Provisions, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. In the event Issuer is entitled to demand adequate assurance of performance under this Section 14.10, Issuer may demand at a minimum a prepayment by Purchaser of an amount equal to (i) the amount owed by Purchaser with respect to all Energy delivered by Issuer to Purchaser as of the date of the demand for adequate assurance of performance, plus (ii) the amount, as determined and adjusted from time to time by Issuer (with the input of Prepay LLC pursuant to the [Receivables Purchase Provisions] (as defined in the Bond Indenture)) in a Commercially Reasonable manner, expected to be owed by Purchaser with respect to the Energy to be delivered by Issuer to Purchaser during the remainder of the then-current Month and the following Month. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend its performance under this Agreement, including the making of deliveries of Energy to Purchaser, immediately upon written notice and shall not be obligated to restore such performance until the later of (A) the first day of the Month after such

demand has been satisfied, and (B) the completion of the term of deliveries to any replacement sales customer to which Prepay LLC has remarketed the Energy on behalf of Issuer.

ARTICLE XV [RESERVED]

ARTICLE XVI NOTICES

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

ARTICLE XVII DEFAULT; REMEDIES; TERMINATION

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

- (a) any representation or warranty made by Issuer in this Agreement proves to have been incorrect in any material respect when made; or
- (b) Issuer fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following the earlier of (i) receipt by Issuer of notice thereof or (ii) an officer of Issuer obtaining actual knowledge of such default.

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

- (a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for one (1) Business Day following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default;
- (b) Purchaser (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted

against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its of assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

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

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

Section 17.3 Remedies Upon Default.

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

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

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

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

Section 17.5 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL

BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE, THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN COMMODITY PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN.

ARTICLE XVIII MISCELLANEOUS

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

Section 18.2 Deliveries. Contemporaneously with this Agreement (unless otherwise specified): Each Party shall deliver to the other Party evidence reasonably satisfactory to it of (i) such Party's authority to execute, deliver and perform its obligations under this Agreement

and (ii) the appropriate individuals who are authorized to sign this Agreement on behalf of such Party;

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

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

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

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

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

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

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

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

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the

date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

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

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

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

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

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

Section 18.14 Third Party Beneficiaries; Rights of Trustee. Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the

amounts payable by Purchaser under this Agreement to secure Issuer's obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Purchaser's obligations under this Agreement, (c) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (d) in the event of any Purchaser Defaults under Section 17.2(a), (i) Prepay LLC may, to the extent provided for in, and in accordance with, the [Receivables Purchase Provisions] (as defined in the Bond Indenture), take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and shall thereafter have all rights of collection with respect to such receivables, and (ii) if such receivables are not so assigned, the [Commodity Swap Counterparty] (as defined in the Bond Indenture) shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer to the Commodity Swap Counterparty that was caused by Purchaser's payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

Section 18.15 Waiver of Defenses. Purchaser waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Purchaser with regard to Purchaser's obligations pursuant to the terms of this Agreement.

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

[Separate Signature Page(s) Attached]

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

EXHIBIT A-1
BASE ENERGY HOURLY QUANTITIES

[To be attached.]

EXHIBIT A-2
EPS ENERGY PERIOD MONTHLY PROJECTED QUANTITIES

[To be attached.]

EXHIBIT A-3
ANNUAL QUANTITY

[To be attached.]

EXHIBIT B
NOTICES

IF TO ISSUER: California Community Choice Financing Authority
1125 Tamalpais Avenue
San Rafael, CA 94901
notices@cccfa.org and invoices@cccfa.org

IF TO PURCHASER: ☐

EXHIBIT C
FORM OF REMARKETING ELECTION NOTICE

[_____]

Energy Prepay [____], LLC
c/o Morgan Stanley Capital Group Inc.
1585 Broadway
New York, NY 10036-8293

[TRUSTEE]

[_____]

[_____]

To the Addressees:

The undersigned, duly authorized representative of San Diego Community Power, a California joint powers authority (the "Purchaser"), is providing this notice (the "Remarketing Election Notice") pursuant to the Power Supply Contract, dated as of [____], 2024 (the "Supply Contract"), between California Community Choice Financing Authority and the Purchaser. Capitalized terms used herein shall have the meanings set forth in the Supply Contract.

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

Given this [____] day of [____], 20[____].

SAN DIEGO COMMUNITY POWER

By: _____

Printed Name:

Title:

EXHIBIT D

FORM OF FEDERAL TAX CERTIFICATE

This Federal Tax Certificate is executed in connection with the Power Supply Contract dated as of [___], 2024 (the “Supply Contract”), by and between California Community Choice Financing Authority (“Issuer”) and San Diego Community Power, a California joint powers authority (“Purchaser”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Supply Contract or in the Bond Indenture.

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

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

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

NOW, THEREFORE, PURCHASER HEREBY CERTIFIES AS FOLLOWS:

1. Purchaser is a community choice aggregator organized as a joint powers authority under the laws of the State of California. As a community choice aggregator, the Purchaser is a load-serving entity providing electricity to customers within the boundaries of cities and/or counties that have elected to participate in Purchaser’s community choice aggregation program. For purposes of this Certificate, the term “service area” of the Purchaser means the boundaries of the cities and/or counties that have elected to participate in the Purchaser’s community choice aggregation program, as well as any other area recognized as the service area of the Purchaser under state or federal law.
2. Purchaser will resell all of the Energy acquired pursuant to the Supply Contract to its retail Energy customers within its service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs or under authorized requirements contracts.
3. From [___, __] to [___, 202_] the annual average amount of Energy purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser is [_____] MWh. Over the term of the Supply Contract, the Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Purchaser who are located within the service area of the Purchaser to be at least [_____] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Supply Contract is [_____] MWh. The annual average amount of Energy which Purchaser otherwise has a right to acquire as of the Bond Closing Date (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) is [_____] MWh. The sum of (a) the maximum amount of Energy in any year being acquired pursuant to the Supply Contract, and (b) the amount of Energy that Purchaser otherwise has a right to acquire (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) in the year described in the foregoing clause

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

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

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

_____, 2024

By: _____
[Name]
[Title]

EXHIBIT E
FORMS OF OPINION OF COUNSEL TO PURCHASER

[INSERT SDCP LETTERHEAD]

[_____] , 2024

California Community Choice Financing Authority
San Rafael, California

Morgan Stanley & Co. LLC
New York, NY

Re: California Community Choice Financing Authority [Clean Energy Project Revenue Bonds, 2024 Series [X]]

Ladies and Gentlemen:

I am general counsel to San Diego Community Power, a California joint powers authority (“SDCP”). This opinion is being provided in connection with the issuance by the California Community Choice Financing Authority (the “Issuer”) of its [Clean Energy Project Revenue Bonds, 2024 Series [X]]. This opinion is rendered in connection with the Bond Purchase Contract, dated [_____] , 2024 (the “Bond Purchase Contract”), by and between [Morgan Stanley & Co. LLC, as underwriter]⁴, and the Issuer. Capitalized terms used herein shall have the meanings given to them in the Bond Purchase Contract.

In rendering this opinion, I have examined or reviewed copies of such records and other documents as I have deemed necessary and relevant for purposes of this opinion. In my examination, I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals, and the conformity of all original documents submitted to me as copies. In basing the opinion set forth in this letter on “my knowledge”, the words “my knowledge” signify that no facts have come to my attention that would give me actual knowledge or actual notice that such opinion is not accurate. Except as otherwise stated in this opinion, I have undertaken no investigation or verification of such matters.

The opinion or conclusions herein may be affected by actions taken or omitted or events occurring after the date hereof. I have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to my attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. In reviewing the documents and matters referred to above, I have assumed the due and legal execution and delivery thereof by, and the validity against, any parties other than SDCP. I have assumed, without undertaking to verify,

⁴ SM NTD: Underwriter(s) to be determined.

the accuracy of the factual matters represented, warranted or certified in such documents. I have further assumed compliance with all covenants and agreements contained in such documents.

Based upon and subject to the foregoing and in reliance thereon, as of the date hereof, to my knowledge, after due inquiry, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to my knowledge, threatened against SDCP, affecting the existence of SDCP or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the execution and delivery of the Power Supply Contract, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or contesting the powers of SDCP or any authority for the execution and delivery of the Power Supply Contract, nor, to my knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Power Supply Contract.

I express no opinion as to any matter other than as expressly set forth above, and I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America. I disclaim any obligation to update this letter.

Very truly yours,

[_____]
General Counsel

[_____] , 2024

To the Addressees on
Schedule I attached hereto

We have acted as counsel to San Diego Community Power, a California joint powers authority (the “Project Participant”) in connection with the issuance by the California Community Choice Financing Authority (the “Issuer”) of its [Clean Energy Project Revenue Bonds, 2024 Series [X]] (the “Bonds”). This opinion is rendered pursuant to the Bond Purchase Contract, dated [_____] , 2024 (the “Bond Purchase Contract”), by and between [Morgan Stanley & Co. LLC, as underwriter (the “Underwriter”)] and the Issuer.

In rendering this opinion, we have examined executed copies of the following documents in the form approved by the Board of Directors of the Project Participant pursuant to Project Participant Resolution (collectively, the “Project Participant Documents”):

- (a) Resolution No. 2024-[_____] adopted by the Board of Directors of the Project Participant on [_____] , 2024 (the “Project Participant Resolution”);
- (b) Power Supply Contract between the Project Participant and the Issuer;
- (c) Custodial Agreement by and among the Project Participant, Energy Prepay [_____] , LLC (the “Energy Supplier”), Morgan Stanley Capital Group Inc. (“MSCG”) and [CUSTODIAN], as custodian;
- (d) Limited Assignment Agreement by and among the Project Participant, the Energy Supplier and MSCG, as seller under the power purchase agreement to which such assignment relates;
- (e) Letter Agreement by and among the Project Participant, the Issuer, the Energy Supplier and MSCG regarding matters relating to Limited Assignment Agreements; and
- (f) Project Administration Agreement relating to the Clean Energy Project, by and between the Project Participant and the Issuer;

We have also reviewed copies of such records and other documents as we have deemed necessary and relevant for purposes of this opinion. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity of all original documents submitted to us as copies.

As to factual matters, we have relied solely upon our review of the foregoing, the representations and warranties of the Project Participant contained in the Project Participant Documents, the Preliminary Official Statement, the Official Statement, the joint powers agreement of the Project Participant, and various certificates and other documents furnished to us by authorized officers of the Project Participant. In basing the opinions set forth in this letter on “our knowledge”, the words “our knowledge” signify that, in the course of our representation, no facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we have undertaken no investigation or verification of such matters.

We are of the opinion that:

1. The Project Participant is a joint powers authority created and existing under the laws of the State of California (the “State”), specifically the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented from time to time (the “Act”), and has full legal right, power and authority under the Act to (a) enter into, execute and deliver the Project Participant Documents, and (b) carry out and consummate the transactions contemplated by the Project Participant Documents.

2. By all necessary official action, the Project Participant has duly authorized all necessary action to be taken by it for (a) the adoption of the Project Participant Resolution, (b) the approval, execution and delivery of, and the performance by the Project Participant of the obligations on its part, contained in the Project Participant Documents, and (c) the consummation by it of all other transactions contemplated by the Preliminary Official Statement, the Official Statement and the Project Participant Documents.

3. The Project Participant Resolution was duly and validly adopted by the Project Participant in compliance with all applicable procedural requirements of the Project Participant and in compliance with the Act, and the Project Participant Resolution is in full force and effect and has not been amended.

4. The Project Participant Documents have been duly authorized, executed and delivered by the Project Participant, and constitute legal, valid and binding obligations of the Project Participant enforceable against the Project Participant in accordance with their respective terms, except to the extent limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application relating to or affecting the enforcement of creditors’ rights.

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

6. The execution and delivery of the Project Participant Documents and compliance by the Project Participant with the provisions thereof, under the circumstances contemplated therein, will not conflict with or constitute on the part of the Project Participant a material breach of or a default under any agreement or instrument to which the Project Participant is a party, or violate any existing law, administrative regulation, court order, or consent decree to which the Project Participant is subject.

7. To our knowledge, the statements contained in the Preliminary Official Statement as of its date and in the Official statement under the captions [“INTRODUCTION – THE PROJECT PARTICIPANT,” “COMMUNITY CHOICE AGGREGATORS,” in the second paragraph under the caption “LITIGATION,” and in Appendix A – “THE PROJECT PARTICIPANT – San Diego Community Power”] are true and correct in all material respects.

Notwithstanding anything to the contrary contained above, the foregoing opinion is expressly made subject to the following exceptions, qualifications, and assumptions:

- (i) We express no opinion with respect to the validity or enforceability of any provisions of the Project Participant Documents or any other documents that may be read to require the Project Participant to indemnify any party.

- (ii) We express no opinion with respect to regulatory compliance by the Project Participant under any applicable law, including the California Public Utilities Code, as amended or supplemented from time to time, as determined by any governmental authority, including the California Public Utilities Commission, regarding the purchase of Energy by the Project Participant under the Power Supply Contract.
- (iii) We express no opinion as to the enforceability of provisions waiving, directly or indirectly, expressly or impliedly, defenses to obligations or rights granted by law, where such waivers are prohibited by law or are against public policy.
- (iv) Our opinion as to enforceability is limited by standards of good faith, fair dealing, materiality, and reasonableness that may be applied by a court to the exercise of certain rights and remedies; limitations based on statutes or on public policy limiting a person's right to waive the benefit of statutory provisions or of a common law right; and limitations releasing a party from or indemnifying a party against liability for its own wrongful or negligent act when such release or indemnification is contrary to public policy.
- (v) Our opinion is limited to the matters stated herein and no opinion may be inferred or implied beyond the matters expressly stated herein. The opinions expressed in this letter are given solely for your use and benefit in connection with the transactions referred to herein and no other person may use or rely on this opinion letter, nor may it be used or relied upon in any other transaction which is not related to transactions referred to herein, without our prior express written consent. This opinion is provided to you as a legal opinion only and not as a warranty or guarantee with respect to the matter described herein or in the documents referred to herein.
- (vi) The scope of this opinion is limited to those issues and parties specifically considered herein and no further or more expansive opinion is implied or should be inferred from any opinion expressed herein. On such basis, any variation or difference in the facts upon which this opinion is based might affect our conclusions in an adverse manner and make them inaccurate.

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

Respectfully submitted,

[]

EXHIBIT F

MONTHLY DISCOUNT

Monthly Discount:	\$[] per MWh
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EXHIBIT G
FORM OF CLOSING CERTIFICATE

CLOSING CERTIFICATE OF PURCHASER

_____, 2024

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

The undersigned _____ of San Diego Community Power, a California joint powers authority (the "*Purchaser*"), hereby certifies as follows in connection with the Power Supply Contract dated as of _____, 2024 (the "*Agreement*") between the Purchaser and California Community Choice Financing Authority ("*Issuer*") and the issuance and sale by Issuer of the above-referenced bonds (the "*Bonds*") (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

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

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

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

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

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

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

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

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

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

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

10. The statements and information with respect to the Purchaser contained in the Official Statement dated _____, 2024 with respect to the Bonds, including Appendix B thereto (the "*Official Statement*"), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

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

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

SAN DIEGO COMMUNITY POWER

By _____

Name:

Title:

EXHIBIT H

FORM OF REMEDIATION CERTIFICATE

[____], 20__

[_____]

Energy Prepay [____], LLC
c/o Morgan Stanley Capital Group Inc.
1585 Broadway
New York, NY 10036-8293
Attn: Miscellaneous Notices
Email: CCCFA_[____]_ms_notices@morganstanley.com

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

To the addressees:

The undersigned, duly authorized representative of San Diego Community Power, a California joint powers authority (“**Purchaser**”), hereby certifies as follows in connection with the Power Supply Contract, dated as of [____], 2024 (the “Contract”), between Purchaser and California Community Choice Financing Authority and remediation of Disqualified Remarketing Proceeds pursuant to [Section 7.5] of the Contract. Capitalized terms used herein shall have the meanings set forth in the Contract.

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

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

SAN DIEGO COMMUNITY POWER

By _____
[Name]
[Title]

EXHIBIT A2

CUSTODIAL AGREEMENT

This Custodial Agreement (this “Agreement”) is made and entered into as of [____], 2024, by and among 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) (defined below) (the “Issuer”), San Diego Community Power, a California joint powers authority (“Participant”), Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), Energy Prepay [____], LLC, a Delaware limited liability company (“Prepay LLC”), and [CUSTODIAN], (the “Custodian” and together with the Issuer, Participant, Prepay LLC and MSCG, the “Parties”, and each individually, a “Party”).

RECITALS:

WHEREAS, the Issuer is issuing its [Clean Energy Project Revenue Bonds, 2024 Series [X]] (the “Bonds”) pursuant to the Trust Indenture, dated as of [____] 1, 2024 (the “Bond Indenture”) between Issuer and [TRUSTEE], in its capacity as trustee under the Bond Indenture (the “Trustee”); and

WHEREAS, Prepay LLC and Issuer are entering into that certain Prepaid Energy Sales Agreement, dated as of [____], 2024 (the “Prepaid Agreement”); and

WHEREAS, in connection with the execution of the Prepaid Agreement, Prepay LLC and MSCG are entering into an Energy Management Agreement, dated as of [____], 2024 (the “Energy Management Agreement”); and

WHEREAS, in connection with the execution of the Prepaid Agreement, Issuer and Participant are entering into a Power Supply Contract, dated as of [____], 2024 (the “Power Supply Contract” and together with the Prepaid Agreement and the Energy Management Agreement, the “Prepay Supply Contracts”); and

WHEREAS, in connection with or subsequent to the execution of the Prepay Supply Contracts, MSCG, Issuer and Participant may enter into one or more Limited Assignment Agreements (the “Assignment Agreements”) pursuant to which Participant partially assigns its rights and obligations under its power supply contracts (“Assigned PPAs”) for redelivery of energy and other specified products pursuant to the Prepay Supply Contracts; and

WHEREAS, the Parties propose to enter into this Agreement in order to administer payments to be received by the sellers under the Assigned PPAs (each, individually, a “PPA Seller” and collectively the “PPA Sellers”, and which definitions shall include any new PPA Seller identified by MSCG’s delivery of an updated Exhibit A consistent with Section 3(c)).

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Defined Terms.

(a) Any capitalized term used herein and not otherwise defined herein (including in the recitals) shall have the meaning assigned to such term in the Power Supply Contract. The following additional terms, when used in this Agreement (including the preamble or recitals to this Agreement) and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“Assigned Product Price” has the meaning specified in Exhibit A, as may be updated from time to time consistent with the terms hereof.

“Assignment Period” has the meaning specified in Exhibit A, as may be updated from time to time consistent with the terms hereof.

“Custodial Agreement Payment Date” means the last Business Day preceding the PPA Monthly Statement Payment Date.

“Delivered Product Payment Amount” means, in respect of each PPA Monthly Statement, an amount equal to the lesser of (a) the Monthly Projected Quantity under the relevant Assigned PPA for such Month multiplied by the Assigned Product Price for such Assigned PPA, and (b) the actual quantity of Assigned Product reflected in such Monthly PPA Invoice multiplied by the Assigned Product Price then in effect under the relevant Assigned PPA, minus the face amount of any [Receivable] (as defined in the Prepaid Agreement) that is delivered by PPA Assignee to the Custodian pursuant to Section 4(e); provided that, notwithstanding the foregoing or anything to the contrary herein, there shall be no Delivered Product Payment Amount or any other obligations of PPA Assignee with respect to Monthly Excess Quantities or Assigned Paygo Quantities.

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

“Monthly Gross Amount” means, in respect of each PPA Monthly Statement, an amount equal to the total net amount due to the applicable PPA Seller in respect of such PPA Monthly Statement and shall consist of the following components: (a) the Delivered Product Payment Amount and (b) the Retained Payment Amount (if such amount is a positive number for such Month).

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

“PPA Assignee Resettlement Amount” means, in respect of any PPA Monthly Statement that (a) is delivered after the delivery of the Billing Statement under the Power Supply Contract for such Month and (b) reflects a quantity of Assigned Product less than the Monthly Projected Quantity was delivered in such Month under the relevant Assigned PPA, an amount equal to the product of (x) the Monthly Projected Quantity for such Month minus the quantity of Assigned Products actually delivered under the Assigned PPA in such Month, multiplied by (y)

the Day-Ahead Market Price during the Initial EPS Energy Period and the Day-Ahead Average Price during any EPS Energy Period subsequent to the Initial EPS Energy Period; provided that, notwithstanding the foregoing or anything to the contrary herein, there shall be no PPA Assignee Resettlement Amount or any other obligations of PPA Assignee with respect to Monthly Excess Quantities or Assigned Paygo Quantities.

“PPA Monthly Statement” means the monthly consolidated invoice delivered to PPA Assignee and Participant consistent with the terms of the applicable Assignment Agreement.

“PPA Monthly Statement Payment Date” means the last Business Day on which payment with respect to a PPA Monthly Statement may be made before any incremental interest arises thereon or any default or breach arises under the Assigned PPA.

“Prepay LLC Prepay Payment Date” means the payment due date for amounts due from Prepay LLC to Issuer under the Prepaid Agreement as set forth in [Section 14.2(a)] thereof.

“Provisional Payment” has the meaning specified in the Prepaid Agreement.

“Retained Payment Amount” means, in respect of each PPA Monthly Statement, an amount equal to all amounts owed to the applicable PPA Seller for such Month, less (b) the sum of the Delivered Product Payment Amount and the PPA Assignee Resettlement Amount, if any; provided that, to the extent the Retained Payment Amount is negative in any Month, then the absolute value of such amount shall represent an amount to be paid by the Custodian to Participant pursuant to Section 4(c)(ii) hereof; provided furthermore that all amounts due with respect to Monthly Excess Quantities and Assigned Paygo Quantities shall be Participant’s sole responsibility as a portion of the Retained Payment Amount.

(b) Except where expressly provided otherwise, any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time in accordance with its terms and the terms hereof, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

Section 2. Appointment of Custodian. Participant, Prepay LLC and MSCG hereby appoint [CUSTODIAN] as Custodian under this Agreement, with such rights and obligations as are specifically set forth herein. The Custodian hereby accepts such appointment under the terms and conditions set forth herein.

Section 3. Payment Instructions to Custodian; Assigned PPA Exhibits.

(a) No later than seven days following Participant’s receipt of a PPA Monthly Statement from a PPA Seller, Participant shall deliver a statement to the other Parties hereto listing the following: the Delivered Product Payment Amount, the Retained Payment Amount, the Monthly Gross Amount, the PPA Monthly Statement Payment Date, the Custodial Agreement Payment Date, the PPA Assignee Resettlement Amount, if any, the Monthly Excess Quantities, if any, the Assigned Paygo Quantities reflected in such PPA Monthly Statement and any Issuer Negative Pricing Payment Amount for such Month (such notice from the Participant, the “Participant Monthly Statement”), as determined, in each case, based on the relevant PPA Monthly

Statement for such Month. The Parties agree to exercise commercially reasonable efforts to implement a test billing period for a period of at least two Months prior to the effectiveness of any Assignment Agreement after the Initial Assignment Agreement.

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

(c) Exhibit A to this Agreement sets forth certain information regarding the Assigned PPAs as of the date hereof, including the Assignment Periods and Assigned Product Prices for each Assigned PPA, the PPA Sellers thereunder and the payment instructions for payments to the PPA Sellers. MSCG shall deliver an updated Exhibit A to each of the other Parties hereto to reflect any changes to the information set forth therein, including due to the expiration, extension or termination of an Assignment Period or the commencement of a new Assignment Period.

Section 4. Assigned PPA Payments Account.

(a) Custodial Account. With respect to payments required to be made by PPA Assignee and Participant to the PPA Sellers under the Assigned PPAs, there is hereby established with the Custodian at its office located at [CUSTODIAN OFFICE ADDRESS], the custodial account listed below (the "Assigned PPA Payments Account") and all payments made by PPA Assignee and Participant hereunder shall be wired to such Assigned PPA Payments Account:

[CUSTODIAN BANK NAME]
ABA# [____]
ACCOUNT NUMBER: [____]
ACCOUNT NAME: [____]¹

(b) PPA Assignee and Participant Monthly Payments.

(i) PPA Assignee shall make payment of the Delivered Product Payment Amount and any PPA Assignee Resettlement Amount into the Assigned PPA Payments Account on the Custodial Agreement Payment Date for each Month of any Assignment Period; provided that, to the extent that (i) the Delivered Product Payment Amount and any PPA Assignee Resettlement Amount are due and (ii) PPA Assignee pays some portion of such amounts but less than the total amount due, PPA Assignee's partial payment shall be applied first to the Delivered Product Payment Amount.

(ii) For each Month of any Assignment Period for which the Retained Payment Amount is a positive number, Participant shall make payment of such amount into the Assigned PPA Payments Account on the Custodial Agreement Payment Date. For each Month of any Assignment Period for which the Retained Payment Amount is a negative number, Participant shall have no payment obligation for such Month with respect to the

¹ SM NTD: Custodian to provide bank account information prior to Pricing Date of the Bonds.

Retained Payment Amount and the Custodian will pay the absolute value of such amount to Participant consistent with Section 4(c)(ii).

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

(c) Transfers by Custodian.

(i) For any Month in an Assignment Period for which the Retained Payment Amount is a positive number, the Custodian shall withdraw the amounts on deposit in the Assigned PPA Payments Account to make payment of the Monthly Gross Amount on the PPA Monthly Statement Payment Date by a single wire transfer to the applicable PPA Seller of the amounts received from each of PPA Assignee and Participant.

(ii) For any Month in an Assignment Period for which the Retained Payment Amount is a negative number, the Custodian shall withdraw amounts on deposit in the Assigned PPA Payments Account (A) first to make payment of the Monthly Gross Amount to the applicable PPA Seller in respect of each PPA Monthly Statement on the relevant PPA Monthly Statement Payment Date pursuant to the payment instructions set forth on Exhibit A; and (B) immediately thereafter to make payment of the absolute value of such Retained Payment Amount to Participant pursuant to the payment instructions set forth on Exhibit B. If the amounts on deposit in the Assigned PPA Payments Account are insufficient to pay the entirety of either such amounts, the Custodian shall apply the amounts available in the order specified in the preceding sentence.

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

(d) Amounts deposited in the Assigned PPA Payments Account shall be held in trust for the benefit of Participant until applied as set forth in Section 4(c) and Section 14, as applicable, and there is hereby granted to Participant a lien on and security interest in the Assigned PPA Payments Account pending such application. Except for any amounts due and payable to Participant pursuant to Section 4(c)(ii), the Custodian shall not be required to comply with any orders, demands, or other instructions from Participant with respect to the Assigned PPA Payments Account, including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, and Participant agrees that, except as set forth in Section 4(c)(ii), prior to the termination of this Agreement in accordance with the terms hereof, it shall have no right to direct the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, or

to withdraw or otherwise obtain funds or other assets held in or credited to the Assigned PPA Payments Account, whether by order or instruction to the Custodian or otherwise.

(e) With respect to each PPA Monthly Statement, to the extent PPA Assignee has purchased [Receivables] (as defined in the Prepaid Agreement) for amounts owed by Participant for the Month to which such PPA Monthly Statement relates, PPA Assignee may, at its option, (i) notify the Custodian that it intends to transfer all or any portion of such Receivables to the PPA Seller, and (ii) reduce the Delivered Product Payment Amount by the face amount of such Receivables to be transferred. To the extent PPA Assignee has notified the Custodian of its intent to transfer any such Receivables, PPA Assignee shall cause such Receivables to be transferred to the PPA Seller not later than the relevant PPA Monthly Statement Payment Date.

Section 5. Provisional Payments Account.

(a) Custodial Account. With respect to Provisional Payments required to be made by Prepay LLC to Issuer under the Prepaid Agreement, as reflected in the Billing Statement which shall be delivered by Prepay LLC to each of the parties hereof consistent with [Section 14.1(b)] of the Prepaid Agreement, there is hereby established with the Custodian at its office located at [CUSTODIAN OFFICE ADDRESS], the following custodial account listed below (the “Provisional Payments Account”) and all payments made by Prepay LLC hereunder shall be wired to such Provisional Payments Account:

[CUSTODIAN BANK NAME]
ABA# [____]
ACCOUNT NUMBER: [____]
ACCOUNT NAME: [____]²

(b) Prepay LLC Monthly Payments. For each Month of the Delivery Period, Prepay LLC shall make payment of the Provisional Payment, if any, due under the Prepaid Agreement for such Month into the Provisional Payments Account on or before the Prepay LLC Prepay Payment Date for each Month of the Delivery Period. The Parties acknowledge and agree that any Provisional Payment due shall be reflected in the Billing Statement delivered by Prepay LLC under [Section 14.1(b)] of the Prepaid Agreement, which Prepay LLC has agreed to deliver to each of the parties hereunder.

(c) Transfers by Custodian; Segregation and Application of Discount Dollars.

(i) Upon receipt of any Provisional Payment under Section 5(b), the Custodian shall promptly (x) withdraw the portion of such Provisional Payment that represents the [Net Participant Price] (as defined in the Prepaid Agreement) that would otherwise be payable by Participant to Issuer with respect thereto under the Power Supply Contract, as reflected in the Billing Statement delivered by Prepay LLC pursuant to [Section 14(b)] of the Prepaid Agreement and (y) and transfer such amount to the Issuer.

² SM NTD: Custodian to provide prior to the Pricing Date of the Bonds.

(ii) The portion of any Provisional Payment in excess of the Net Participant Price (such portion, the “Discount Dollars”) shall be segregated by the Custodian and applied as set forth below:

(A) to the extent that (I) there is a positive balance of Discount Dollars being held by the Custodian and (II) any Participant Monthly Statement reflects that Monthly Excess Quantities were delivered under an Assigned PPA for any given Month, the Custodian shall withdraw \$[]³ per MWh of Monthly Excess Quantities on the relevant PPA Monthly Statement Payment Date and transfer such amount to Participant pursuant to the payment instructions set forth for payments to Participant on Exhibit A; and

(B) Prepay LLC shall notify the Custodian and each of the other Parties hereto if less than the Annual Quantity is delivered under the Prepay Supply Contracts for any Contract Year, and, promptly following receipt of any such notice, the Custodian shall transfer any remaining Discount Dollars to the Trustee for deposit in [Energy Remarketing Reserve Fund] under and as defined in the Bond Indenture.

Section 6. Custodian. The Custodian shall have (a) no liability under any agreement other than this Agreement and (b) no duty to inquire as to the provisions of any agreement other than this Agreement and the Assigned PPAs. The Custodian may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder in accordance with the terms hereof and believed by it to be genuine and to have been signed or presented by the proper Party or Parties. The Custodian shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Custodian shall have no duty to solicit or compel any payments which may be due to it, or to take any action to compel PPA Assignee or Participant to make the deposits required under Section 4. The Custodian shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Custodian’s gross negligence or willful misconduct was the primary cause of any loss to any other Party hereto. In connection with the execution of any of its powers or the performance of any of its duties hereunder, the Custodian may consult with counsel, accountants and other skilled persons selected and retained by it. The Custodian shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, provided the Custodian exercised due care and good faith in the selection of such person. The permissive rights of the Custodian to take actions enumerated under this Agreement shall not be construed as duties. In the event that the Custodian shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other Parties hereto or by a final order or judgment of a court of competent jurisdiction. The Custodian may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all

³ SM NTD: MS to provide on Pricing Date.

liability or obligation with respect to such interpleaded assets or any action or non-action based on such declaratory judgment. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, incidental, consequential, or punitive damages, losses or penalties of any kind whatsoever (including but not limited to lost profits), regardless of the form of action. The Custodian may engage and act through agents and attorneys and shall not be liable for the misconduct or negligence of any such agent or attorney appointed with due care. The Custodian shall not be liable for any action taken by it in good faith in accordance with instruction received in accordance with this Agreement, or for the application of funds by other actions or omissions of other persons. The Custodian shall be responsible only for funds actually received by it for deposit into the Assigned PPA Payments Account, and the Custodian shall not be obliged to advance or risk its own funds to make any payments required hereunder. The Custodian shall have only those duties expressly set forth in this Agreement and no implied duties shall be read into this Agreement against the Custodian. The Parties hereto acknowledge and agree that the Custodian is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities or liabilities with respect to its services hereunder. The Custodian shall not be responsible for the perfection of any security interest granted hereunder.

Section 7. Succession. The Custodian may resign and be discharged from its duties or obligations hereunder by giving not less than 30 days' advance notice in writing of such resignation to the other Parties hereto specifying a date when such resignation shall take effect; and such resignation shall take effect upon the day specified in such notice unless a successor shall not have been appointed by the other Parties hereto on such date, in which event such resignation shall not take effect until a successor is appointed. The other Parties hereto shall use their commercially reasonable efforts to make such appointment in a timely fashion, provided that any custodian appointed in succession to the Custodian shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least \$50,000,000 and shall be a bank with trust powers or trust company willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Agreement. Any corporation or association into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the Custodian's corporate trust line of business may be transferred, shall be the Custodian under this Agreement without further act. Notwithstanding the foregoing, if no appointment of a successor Custodian shall be made pursuant to the foregoing provisions of this Section 7 within 30 days after the Custodian has given written notice to the other Parties of its resignation as provided in this Section 7, the Custodian may, in its sole discretion, apply to any court of competent jurisdiction to appoint a successor Custodian. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Custodian.

Section 8. Fees. Prepay LLC agrees to pay the Custodian reasonable compensation for the services to be rendered hereunder, which compensation shall be \$[_____] ⁴ for each year that this Agreement is in effect. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

⁴ SM NTD: Custodian to provide.

Section 9. Reimbursement. The Issuer, MSCG, Prepay LLC and Participant agree, jointly and severally (subject to the second proviso of this Section 9), to reimburse the Custodian and its directors, officers, agents and employees for any and all loss, liability or expense (including the fees and expenses of in-house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (a) its acting as the Custodian under this Agreement, except to the extent that such loss, liability or expense is finally adjudicated to have been caused primarily by the gross negligence or willful misconduct of the Custodian or such director, officer, agent or employee seeking reimbursement, or (b) its following any instructions or other directions from MSCG, Prepay LLC or Participant, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof; provided, however, that any amounts due under this Section 9 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 15 hereof; provided further, however, that, notwithstanding the joint and several nature of the obligations under this Section 9, any amounts due under clause (b) of this sentence resulting from instructions or directions that are not expressly provided for in this Agreement and are given to the Custodian by only one Party shall be the sole obligation of such Party. The Parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 10. Taxpayer Identification Numbers; Tax Matters. MSCG, Prepay LLC and Participant represent that their correct taxpayer identification numbers assigned by the Internal Revenue Service or any other taxing authority is set forth on the signature page hereof. Any tax returns or reports required to be prepared and filed in connection with the Assigned PPA Payments Account will be prepared and filed by Participant, and the Custodian shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned on the Assigned PPA Payments Account. In addition, any tax or other payments required to be made pursuant to such tax return or filing shall be paid by Participant. The Custodian shall have no responsibility for making such payment unless directed to do so in writing by the appropriate authorized Party and fully indemnified to the Custodian's satisfaction.

Section 11. Notices.

(a) Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by email transmission or other Electronic Means (defined below), courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission or other Electronic Means (defined below), or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service); provided that, if a Party delivers a notice, demand or request by any means other than email transmission, such notice shall not be effective unless and until the Party also delivers a copy thereof to the other Parties' email address specified in Exhibit B. Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods, such as electronic mail. Notwithstanding the foregoing, any Party may at any time notify the others that any notice, demand, statement or request to it must be provided by email transmissions for a specified period

of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective. In the event that the Custodian, in its sole discretion, shall determine that an emergency exists, the Custodian may use such other means of communication as the Custodian deems appropriate.

(b) Exhibit A shall include each PPA Seller's notice and payment information as set forth in the Assigned PPAs, and MSCG and Participant promptly shall cause such information to be updated to the extent there are any changes to such information under the Assigned PPAs.

(c) The Custodian shall have the right to accept and act upon instructions or directions given pursuant to this Agreement, or any other document reasonably relating to the matters described herein, delivered using Electronic Means (defined below); provided, however, that each party giving directions to the Custodian hereunder shall provide to a Responsible Officer of the Custodian an incumbency certificate, substantially in the form attached hereto as Exhibit C, listing persons with the authority to provide such instructions or directions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended, with written notice to a Responsible Officer of the Custodian, whenever a person is to be added or deleted from the listing. If a party elects to give the Custodian directions or instructions using Electronic Means (defined below) and the Custodian in its discretion elects to act upon such directions, the Custodian's understanding of such directions shall be deemed controlling. The parties understand and agree that the Custodian cannot determine the identity of the actual sender of such directions and that the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided by a party to a Responsible Officer of the Custodian have been sent by such Authorized Officer. The party giving such instructions shall be solely responsible for ensuring that only Authorized Officers transmit such directions to the Custodian and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys issued by the Custodian as confidential and with extreme care. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such directions notwithstanding that such directions conflict or are inconsistent with a subsequent written direction. The party giving such directions agrees: (i) to assume all risks arising out of the use of Electronic Means (defined below) to submit directions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Custodian and that there may be more secure methods of transmitting directions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

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

Section 12. Miscellaneous.

(a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the Parties hereto.

(b) Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party, except as provided in Section 7, without the prior written consent of the other Parties.

(c) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF THE LAWS ANOTHER JURISDICTION; PROVIDED, HOWEVER, THAT THE AUTHORITY OF PARTICIPANT TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(d) EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY MAIL OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF (A) THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN, (B) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK OR (C) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA IN ANY OTHER STATE WHERE AN OFFICE OF THE CUSTODIAN IS LOCATED. THE PARTIES FURTHER HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT.

(e) No Party to this Agreement shall be liable to any other Party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control; provided that a Party affected by any such event shall exercise commercially reasonable efforts to resume performance as quickly as possible.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by digital pdf transmission, and such facsimile or pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party. All signatures of the parties to this Agreement may be transmitted by facsimile or by digital pdf transmission under the terms set forth in this Section 12(f). The parties agree that the electronic signature of a party to this Agreement, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to

be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. Paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

(g) The Custodian shall not be under any obligation to invest or pay interest on amounts held in the Assigned PPA Payments Account from time to time.

(h) Issuer shall have only such duties under this Agreement as are expressly set forth herein as duties on its part to be performed, and no implied duties shall be read into this Agreement against Issuer.

(i) Nothing in this Agreement is intended to create any liabilities between Issuer, Prepay LLC, MSCG and Participant. This Agreement is intended solely to allocate payments that are actually made by Prepay LLC, MSCG and Participant in respect of amounts owed for physically settled energy under the Assigned PPAs and the Prepay Supply Contracts.

Section 13. Compliance with Court Orders. In the event that any amount held by the Custodian hereunder shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, the Custodian is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing are binding upon it, whether with or without jurisdiction, and in the event that the Custodian obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree may be subsequently reversed, modified, annulled, set aside or vacated.

Section 14. Term; Winding Up. This Agreement will expire concurrently with the receipt of written notice from Participant, with a copy to the other Parties, that the Power Supply Contract has terminated in accordance with its terms. Following the Custodian’s payment of any Monthly Gross Amount due in respect of the final Month of power deliveries prior to such a termination, any remaining balance in the Assigned PPA Payments Account shall be paid to Participant.

Section 15. Indemnification. The Issuer, MSCG, Prepay LLC and Participant, jointly and severally, agree to protect, indemnify, defend and hold harmless, the Custodian, and its affiliates, and each person who controls the Custodian (and each of their respective directors,

officers, agents and employees) from and against all claims, damages, losses, liabilities, actions, suits, costs, judgments and expenses (including, without limitation, court costs and reasonable attorneys' fees) arising from its acting as Custodian hereunder (including, for the avoidance of doubt, any costs, expenses and reasonable attorneys' fees incurred in enforcing any payment obligation of an indemnifying Party), except for any claim, damage, loss, liability, action, suit, cost, judgment or expense resulting from the gross negligence or willful misconduct of the Custodian; provided, however, that any amounts due under this Section 15 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 9 hereof. The obligations of this Section 15 shall survive any resignation or removal of the Custodian and the termination of this Agreement. In addition, notwithstanding anything herein to the contrary, the Custodian shall have all of the rights (including the indemnification rights), benefits, privileges and immunities under this Agreement as are granted to the Trustee under the Bond Indenture, all of which are incorporated, mutatis mutandis, into this Agreement.

Section 16. USA PATRIOT Act. The Issuer, MSCG, Prepay LLC and Participant acknowledge that the Custodian is subject to federal laws, including the Customer Identification Program ("CIP") requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Custodian must obtain, verify and record information that allows the Custodian to identify MSCG, Prepay LLC and Participant. Accordingly, prior to opening the Assigned PPA Payments Account described in Section 4 of this Agreement, the Custodian will ask the Issuer, MSCG, Prepay LLC and Participant to provide certain information including but not limited to name, physical address, tax identification number and other information that will help the Custodian identify and verify the Issuer, MSCG, Prepay LLC and Participant's identities, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. The Issuer, MSCG, Prepay LLC and Participant agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies the Issuer's MSCG, Prepay LLC and Participant's identities in accordance with its CIP.

Section 17. Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of the Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of the 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). The 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 the Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this 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 Follow]

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

SAN DIEGO COMMUNITY POWER

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

MORGAN STANLEY CAPITAL GROUP
INC.

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

ENERGY PREPAY [], LLC

By: Morgan Stanley Capital Group Inc., its
Manager

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

[CUSTODIAN]

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

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

EXHIBIT A
ASSIGNED PPAS

[]

EXHIBIT B

NOTICE INFORMATION

PPA Buyer:

*PPA Buyer Payment Information:*⁵Bank Name: Bank Routing Number: Account Number:

FBO: [San Diego Community Power]

Issuer:

California Community Choice Financing Authority

1125 Tamalpais Avenue

San Rafael, CA 94901

Email: *Issuer Payment Information:*[CUSTODIAN BANK NAME] ⁶ABA# ACCOUNT NUMBER: ACCOUNT NAME: **MSCG:**

Morgan Stanley Capital Group Inc.

1585 Broadway

New York, NY 10036-8293

Email: CCCFA__mses_notices@morganstanley.com**Prepay LLC:**Energy Prepay , LLC

c/o Morgan Stanley Capital Group Inc.

Attention: Commodities Sales & Trading

1585 Broadway

New York, NY 10036-8293

Email: @morganstanley.com]**Custodian:**

⁵ SM NTD: Participant to provide bank account information.

⁶ SM NTD: Custodian to provide bank account information.

[]

Telephone: []

Attention: []

Fax: []

Email: []

EXHIBIT C

FORM OF CERTIFICATE OF INCUMBENCY

The undersigned, a duly authorized officer of [____], in connection with the Custodial Agreement by and among California Community Choice Financing Authority (“Issuer”), San Diego Community Power, a California joint powers authority (“Participant”), Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), Energy Prepay [____], LLC, a Delaware limited liability company (“Prepay LLC”), and [CUSTODIAN] (the “Custodian”) dated as of [____], 2024 (the “Custodial Agreement”), HEREBY CERTIFIES that the persons whose names, titles and signatures appear below are duly qualified and acting representatives of [____] (“Authorized Representatives”) on the date hereof. Each holds the office set forth beside his/her name, and the signature appearing opposite his/her name is the genuine signature of such Authorized Representative. Only those individuals, or such additional individuals as the undersigned may designate prior to written notice to the Custodian in the future, shall execute and deliver any written instructions, confirmations or certificates on behalf of [____] in connection with the Custodial Agreement. Custodian shall not be obligated to accept any written instructions, confirmations or certificates executed by an individual other than those listed below or so designated in the future.

NAME	TITLE	PHONE NO.	SIGNATURE

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

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

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

[NAME OF PARTY]

By: _____

Name:

Title:

EXHIBIT A3

FORM OF LIMITED ASSIGNMENT AGREEMENT

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**”), San Diego Community Power, a California joint powers authority (“**PPA Buyer**”), and Morgan Stanley Capital Group Inc., a Delaware corporation (“**MSCG**”).

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain Renewable Power Purchase Agreement, dated as of _____ (the “**PPA**”);

WHEREAS, in connection with a prepaid electricity transaction between the Issuer (as defined below) and Prepay Seller (as 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 in the Assigned Monthly Quantity and MSCG will deliver such Assigned Product to Prepay Seller, 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 Monthly Quantity**” has the meaning specified in Appendix 2.

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

“**Assigned Rights and Obligations**” means (i) the rights of PPA Buyer under the PPA to

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

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

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

“**Assignment Period End Date**” means 11:59:59 p.m. pacific prevailing time on the last day of the Delivery Term (as defined in the PPA).

“**Assignment Period Start Date**” means [_____].

“**Custodian**” has the meaning specified in Appendix 2.

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

“**Issuer**” has the meaning specified in Appendix 2.

“**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.

“**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**” has the meaning specified in Appendix 2.

“**Prepay Power Supply Contract**” has the meaning specified in Appendix 2.

“**Prepay Seller**” has the meaning specified in Appendix 2.

“**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 Products in the Assigned Monthly Quantity 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 Products and, subject to Section 3(a), 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 Products during the Assignment Period, 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 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 payment obligations hereunder will be to make the payments into the Custodial Account as 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 8.2 of the PPA for a quantity up to, but not exceeding, the Assigned Monthly Quantity, based upon the Contract Price as set forth in the PPA and as adjusted by Exhibit C thereof. PPA Buyer shall remain responsible for payment and performance of all of its obligations under the PPA during the Assignment Period, including 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. Any payment adjustments or subsequent reconciliations occurring or to occur after payment by MSCG as described in this Section 3(a) will be resolved exclusively between PPA Buyer and PPA Seller consistent with the applicable provisions of the PPA.

(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 (provided, however, PPA Buyer still remains liable that all amounts due and owing under the PPA are timely paid), 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.

(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**"). 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.

(d) **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 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 Prepay Seller, 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; and (iii) 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 the PPA, (D) invoices delivered by PPA Seller under Section 8.1 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. For the avoidance of doubt, in accordance with Section 5.1 of the PPA, PPA Buyer shall continue to pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by PPA Buyer or MSCG, as applicable, of Product that are imposed on Product at and after its delivery to PPA Buyer or MSCG, as applicable, at the time and place contemplated under the PPA or hereunder (other than withholding or other Taxes imposed on PPA Seller's income, revenue, receipts or employees), if any.

(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. 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.

(f) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, Prepay Seller 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, Prepay Seller may sell such Receivables to MSCG and, provided that MSCG has notified PPA Seller in writing (with a copy to PPA Buyer) (a "**Receivables Setoff Notice**") that the amount of any such Receivables is true and accurate, 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. The amount of any Receivables set forth in a Receivables Setoff Notice shall be final and binding unless PPA Buyer shall have provided PPA Seller and MSCG a written notice within two (2) Business Days of its receipt of a Receivables Setoff Notice containing conclusive evidence that such amount is incorrect and asserting what PPA Buyer has determined is the correct amount of Receivables. If any dispute arises therefrom, MSCG shall still be entitled to set-off the amount of Receivables set forth in its Receivables Setoff Notice as provided above, and any such dispute as to the correct amount of Receivables shall be settled exclusively between PPA Buyer and PPA Seller with no liability to MSCG, provided that 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. Forward Contract. The Parties acknowledge and agree that the delivery of the Assigned Products to MSCG contemplated hereby is intended to constitute a “forward contract” and that the Parties are intended to 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; 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 any termination notice provided pursuant to Section 5(b), which date shall not be earlier than the end of the last day of the Month in which such notice is delivered if termination is pursuant to clause (b)(i) above. The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date 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 shall immediately and automatically revert from MSCG to PPA Buyer, provided that (i) MSCG shall remain jointly 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) **Notice of Assignment Early Termination Date.** Within three (3) Business Days of the occurrence of an Assignment Early Termination Date, PPA Buyer shall provide written notice thereof to PPA Seller.

6. Representations and Warranties.

(a) **Copy of PPA.** As of the Assignment Agreement Effective Date, PPA Buyer represents and warrants 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 Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to MSCG that, to its knowledge, 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.** As of the Assignment Effective Date, each of PPA Seller and PPA Buyer represents and warrants to MSCG that:

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

ii. to its knowledge, 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 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 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.

7. **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by email), 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 and executed by each of the Parties.

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 3 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. **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 California, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall select one person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, MSCG, PPA Buyer and PPA Seller are the "**Arbitration Parties**"), provided that if the arbitration pertains to matters and disputes solely

as between PPA Buyer and MSCG, and PPA Seller is neither asserting nor defending a claim in relation thereto, then each of MSCG and PPA Buyer shall select one person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, only MSCG and PPA Buyer are the “**Arbitration Parties**”). The JAMS appointed arbitrator shall serve as the chairperson (the “**chairperson**”). If any of the Arbitration Parties are unable or fail to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Arbitration Party or have any direct pecuniary interest in any Arbitration Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Arbitration Parties. The Arbitration Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Arbitration Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be shared equally between or among the Arbitration Parties, as the case may be. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Arbitration Party or Arbitration Parties, if any, the costs and attorney’s fees reasonably incurred in seeking to enforce the application of this Section 11(b) by the prevailing party in connection with the arbitration, and the non-prevailing Arbitration Party or Arbitration Parties shall also be liable to the prevailing Arbitration Party or Arbitration Parties for the compensation and expenses of the three arbitrators and all costs charged by JAMS. Notwithstanding the foregoing provisions of this Section 11(b), any costs incurred by an Arbitration Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Arbitration Party against whom such court order is obtained. The award shall be final and binding on the Arbitration Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) **Judicial Reference.** Without limiting the provisions in Section 11(b), if Section 11(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “**Dispute**”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“**CCP**”), or their successor sections (a “**Reference Proceeding**”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 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**”; and together with the Disputing Party, the “**Dispute 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**”). If the Notice of Dispute makes no claim or assertion against one of the Responding Parties, and such Responding Party, in making its Dispute Response does not make or assert a claim against either the Disputing Party or the other Responding Party and states that it has no interest in the Dispute, then such Responding Party shall not participate in the resolution of the Dispute and shall not be a “**Dispute Party**” for purposes of this Section 11(c). Thereafter, the Dispute Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Dispute Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the “**Negotiation Period**”), then any Dispute Party may provide to the other Dispute Party(ies) written notice of intent for judicial reference (the “**Impasse Notice**”) in accordance with the further provisions of this Section 11.

ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall nominate one (1) referee, provided that if PPA Seller is not a Dispute Party, then each of MSCG and PPA Buyer shall nominate (1) referee, and PPA Seller will not nominate a referee. The two (2) referees (the “**Party-Appointed Referees**”) shall unanimously appoint one additional referee (the “**Additional Referee**”, together with the Party-Appointed Referees, the “**Referees**”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Additional Referee shall be an active or retired California state or federal judge (the “**Head Referee**”). Each of the Party-Appointed Referees and the Additional Referee shall be impartial and independent of each of the Dispute Parties and of the other referees and not employed by any of the Dispute Parties in any prior matter.

iii. If the Party-Appointed Referees are unable to agree on the Additional Referee within 45 days from delivery of the Impasse Notice, then the Additional 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 Dispute 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, on the one hand, and PPA Seller, on the other hand, shall have one (1) peremptory challenge to the referee selected by the Court, provided that if PPA Seller is not a Dispute Party, then each of MSCG and PPA Buyer shall have one (1) peremptory challenge to the referee selected by the Court.

iv. Discovery; Proceedings.

(A) The Dispute 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 Head 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 Dispute Parties, or if they cannot agree, as determined by the Head Referee after discussion with the Dispute Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Head 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 Dispute Parties, or if not agreed by the Dispute Parties, by the Head 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 Dispute 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 Dispute 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 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 Dispute Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

(d) **Expenses.** The Dispute Parties 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 shared equally between or among the Dispute Parties, as the case may be.

12. Appendix 2 Prepaid Transaction Details. Appendix 2 sets forth certain details relating to the volume of Assigned Monthly Quantities as well as certain details relating to the commodity prepayment transaction pursuant to which the Assigned Products shall be redelivered, provided that such Appendix 2 may be updated from time to time to change the Assigned Monthly Quantities (including without limitation a change thereto to provide that the Assigned Monthly Quantities means all MWh of Assigned Product delivered in accordance with the PPA by PPA Seller) and to change the relevant commodity prepayment transaction pursuant to which the Assigned Products shall be redelivered, in each case by providing written notice of MSCG and PPA Buyer to PPA Seller at least thirty (30) days prior to any such change taking effect.

13. U.S. Resolution Stay. The Parties agree that the terms of Section 1 and Section 2 and the related defined terms (together, the “Bilateral Terms”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups),” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a “Covered Agreement”, MSCG shall be deemed a “Covered Entity” and the Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Agreement, all Parties hereto become adhering Parties to the 2018 ISDA U.S. Resolution Stay Protocol (the “Protocol”), the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol or the Bilateral Terms (each, the “QFC Stay Terms”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this Agreement” include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other.

“QFC Stay Rules” means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Assignment Agreement Effective Date.

[PPA SELLER]

By: _____

Name: _____

Title: _____

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

MORGAN STANLEY CAPITAL GROUP INC.

By: _____

Name: _____

Title: _____

Appendix 1

Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller, 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 Facility Energy under the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month 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. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

Limitation of MSCG Liability. MSCG has separately agreed with the PPA Buyer and the Custodian (pursuant to the Custodial Agreement dated as of [_____] (as amended), among PPA Buyer, MSCG, Prepay Seller and the Custodian (the "**Custody Agreement**")) to pay into the custodial account specified in the Custody Agreement (the "**Custodial Account**") for Assigned Product delivered during each Month of the Assignment Period for a quantity up to, but not exceeding, the Assigned Monthly Quantity, 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 to 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.

"Day-Ahead Average Price" means (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month; provided that in no case shall the Day-Ahead Average Price hereunder be less than \$0.00/MWh. As used in this definition, "Pricing Interval" means the unit of time for which CAISO establishes a separate price. As used in this definition "Day-Ahead Market Price" means the Day Ahead Market or Locational Marginal Price for SP15 EZ GEN HUB 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

Prepay Transaction Details

“**Assigned Monthly Quantity**” means the first (as specified below) MWhs of Assigned Product delivered in accordance with the PPA by PPA Seller in each Month during the Assignment Period in the following quantities:

Month	MWhs
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

“**Custodian**” means The Bank of New York Mellon Trust Company, N.A., a national banking association.

“**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 [____], by and between Prepay Seller and Issuer.

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

“**Prepay Seller**” means [____], a [state] [form of organization], or any other Person that is the prepay seller under the terms of the Prepaid Agreement from time to time.

Appendix 3

Notice Information

[To be completed before signing.]

Appendix 4

Copy of PPA

[To be attached.]

EXHIBIT A4

LETTER AGREEMENT

[], 2024

San Diego Community Power

[]

[]

Email: []

California Community Choice Financing Authority

1125 Tamalpais Avenue

San Rafael, CA 94901

Email: []

Re: PPA Assignments for Delivery under Prepay Energy Agreements

Ladies and Gentlemen:

This Letter Agreement (this “Letter Agreement”) confirms our mutual agreement with respect to the matters set forth below and relates to (i) that certain Power Supply Contract (the “Power Supply Contract”), dated as of the date hereof, by and between California Community Choice Financing Authority (“Issuer”) and San Diego Community Power (“Project Participant”), (ii) that certain Prepaid Energy Sales Agreement (the “Prepaid Agreement”), dated as of the date hereof, by and between Energy Prepay [], LLC, a Delaware limited liability company (“Prepay LLC”) and Issuer, and (iii) that certain Energy Management Agreement (the “Energy Management Agreement”) (together with the Power Supply Contract and the Prepaid Agreement, the “Prepay Energy Agreements”), dated as of the date hereof, by and between Morgan Stanley Capital Group Inc. (“MSCG”) and Prepay LLC. 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, Prepay LLC 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 Prepay LLC 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 (each, an “Assignment Agreement”), 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) Prepay LLC 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 Prepay LLC 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, Prepay LLC 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 Prepay LLC under the Energy Management Agreement; Prepay LLC 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, Prepay LLC 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, Prepay LLC 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 Prepay LLC 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 Prepay LLC'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 2(a)(1)] 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:

- i. the assignment of the Prepay Power Supply Contract by Project Participant or Issuer pursuant to [Article XIII] thereof, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of such assignment;
- ii. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination; or
- iii. to the extent that MSCG and Project Participant have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay 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 from MSCG or Project Participant to the PPA Seller and the other Party hereto;

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

- i. the suspension, expiration, or termination of performance of the PPA by either Project Participant or PPA Seller for any reason other than the occurrence of a Force Majeure Event under and as defined in the PPA, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of PPA Seller’s or Project Participant’s (as applicable) last performance under the PPA following such suspension, expiration, or termination;
- ii. (A) any event or circumstance occurs that would either give either Project Participant or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether Project Participant or PPA Seller exercises such right), or (B) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSCG’s rights or obligations under the Assignment Agreement (provided that MSCG shall not have a right to terminate under this clause (B) to the extent that MSCG (I) receives prior notice of such change and (II) provides its written consent thereto), with respect to which the Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election as determined by MSCG;

(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, with respect to which the Assignment Early Termination Date shall

occur upon the date set forth in a written notice of such election delivered by Project Participant;

- 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 PPA, a dispute under the 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 Prepay Power Supply Contract, or the 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 the Parties agrees that it shall not terminate an Assignment Agreement pursuant to the at will termination provision thereof (as set forth in [Section 2(a)(1)] 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) **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and Project Participant shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "**chairperson**") within thirty (30) days of the commencement of the arbitration. If either MSCG or Project Participant is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If MSCG and Project Participant-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators

shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 9(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 9(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) **Judicial Reference.** Without limiting the provisions in Section 9(b), if Section 9(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a **"Dispute"**) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (**"CCP"**), or their successor sections (a **"Reference Proceeding"**), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 9(c)i.

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the **"Disputing Party"**) shall provide the other Parties (the **"Responding Parties"**) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the **"Notice of Dispute"**). Within ten (10) Days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the **"Dispute Response"**). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty (60) Days after receipt of the Dispute Response, (the **"Negotiation Period"**), then any Party may provide to the other Parties written notice of intent for judicial reference (the **"Impasse Notice"**) in accordance with the further provisions of this Section 9(c).

ii. Applicability; Selection of Referees.

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

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

iii. Discovery; Proceedings.

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

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

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

(D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so

requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

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

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

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,

PREPAY LLC

ENERGY PREPAY [], LLC

By: Morgan Stanley Capital Group Inc., its Manager

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

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

ISSUER

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT

LIMITED ASSIGNMENT AGREEMENT

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**”), San Diego Community Power, a California joint powers authority (“**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**”) and [_____] (“**Prepay LLC**”), 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 Prepay LLC, 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)].

“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 5(b).

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

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

“Assignment Period Start Date” means [_____].

“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.

“Custodian” means [_____].

“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.

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

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

“Prepaid Agreement” means that certain Prepaid Energy Sales Agreement dated as of [_____] by and between Prepay LLC and Issuer as amended from time to time.

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

“Prepay Power Supply Contract” means that certain Prepay Power Supply Contract dated [] 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 and agrees to PPA Buyer’s assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period.

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

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s and PPA Seller’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 and PPA Seller 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 (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations, and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **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 seven days thereafter, 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 Prepay LLC, 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 and PPA Seller will provide written notice (including copies thereof) of any other proposed or actual amendment, waiver, supplement, modification, or other changes to the PPA to MSCG prior to the effectiveness thereof, 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.

(f) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, Prepay LLC may 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, Prepay LLC 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. To effect such transfer, MSCG shall deliver to PPA Seller a notice of intent to transfer Receivables not later than the payment due date for the Delivered Electricity Payment Obligations and shall deliver to PPA Seller a bill of sale signed by MSCG not later than five (5) Business Days thereafter.

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; 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 amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five (5) 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 5(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Sections 5(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 5(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.

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

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

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

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

7. Miscellaneous.

Article ☐ (Confidential Information), ☐ (No Consequential Damages), ☐ (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.

8. 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.

9. 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 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.

10. 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) Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including

the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “**chairperson**”) within thirty (30) days of the commencement of the arbitration. If either MSCG or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the MSCG and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney’s fees reasonably incurred in seeking to enforce the application of this Section 10(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) Judicial Reference. Without limiting the provisions in Section 10(b), if Section 10(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “**Dispute**”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“**CCP**”), or their successor sections (a “**Reference Proceeding**”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10(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 10(c).

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.

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

[PPA SELLER]

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

MORGAN STANLEY CAPITAL GROUP INC.

By: _____
Name: _____
Title: _____

Appendix 1 Assigned Rights and Obligations

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

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

Appendix 2

MSCG Notice Information

[To be completed before signing.]

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**”), San Diego Community Power, a California joint powers authority (“**PPA Buyer**”), and Energy Prepay [____], LLC, a Delaware limited liability company (“**Prepay LLC**”).

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain [Power Supply Agreement], dated as of [____] as further described in Appendix 1 (the “**PPA**”); and

WHEREAS, in connection with a prepaid electricity transaction entered into between California Community Choice Financing Authority (“**Issuer**”), and Prepay LLC, and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by partial assignment to Prepay LLC, and Prepay LLC wishes to accept the transfer by partial assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

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

AGREEMENT

11. 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 Energy to be delivered to Prepay LLC hereunder pursuant to the Assigned Rights and Obligations.

“**Assigned Monthly Quantity**” means the first [____] MWhs delivered by PPA Seller in each Month during the Assignment Period.

“**Assigned Rights and Obligations**” means (i) the right of PPA Buyer under the PPA to receive the Assigned Monthly Quantity of Assigned Energy during the Assignment Period, as such right may be limited or further described in the “Further Information” section in Appendix 1, and

(ii) the Delivered Energy Payment Obligation, which right and obligation are transferred and conveyed to Prepay LLC hereunder.

“Assignment Early Termination Date” has the meaning specified in Section 5(b).

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

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

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

“Business Day” has the meaning specified in the Prepaid Agreement.

“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 Energy Payment Obligation.

“Day-Ahead Average Price” has the meaning specified in Appendix 1.

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

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

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

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

“Month” means a calendar month.

“MWh” has the meaning specified in the Prepaid Agreement.

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

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

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

“Prepaid Agreement” means that certain Prepaid Energy Sales Agreement dated as of [____], 2024 by and between Prepay LLC and Issuer.

“**Prepay LLC**” has the meaning specified in the first paragraph of this Agreement.

“**Prepay Power Supply Contract**” means that certain Prepay Power Supply Contract dated [___], 2024 by and between PPA Buyer and Issuer.

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

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

12. Transfer and Undertakings.

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

(c) Prepay LLC 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.

13. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s and PPA Seller’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 and PPA Seller 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 Energy Payment Obligation.** Prepay LLC’s sole obligations to PPA Seller will be to pay the Day-Ahead Average Price to PPA Seller for the Assigned Monthly Quantity during each Month of the Assignment Period on each applicable payment date under Section [___] of the PPA irrespective of the amount of electricity actually delivered by PPA Seller to PPA Buyer (the “**Delivered Energy Payment Obligation**”); provided that, to the extent PPA Buyer uses less than the Assigned Monthly Quantity in any given Month during the Assignment Period, then PPA Seller shall (i) be deemed to remarket such quantities not taken for the economic benefit of Prepay LLC and (ii) credit against Prepay LLC’s Delivered Energy Payment Obligation an amount equal to (A) any such quantities deemed remarketed multiplied by (B) the Day-Ahead Average Price.

(b) **Retained Rights and Obligations.** Any Claims (other than the Delivered Energy 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 Prepay LLC, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Energy 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 Energy (including Assigned Energy) 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) PPA Buyer and PPA Seller will provide copies of all billing statements and generation reports delivered during the Assignment Period to Prepay LLC and Issuer contemporaneously upon delivery of such statements and reports to the other party to the PPA; (ii) title to Assigned Energy will pass to Prepay LLC upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (iii) immediately thereafter, title to such Assigned Energy will pass to Issuer and then to PPA Buyer upon delivery by Prepay LLC at the same point where title is passed to Prepay LLC pursuant to clause (ii) above; and (iv) PPA Buyer will be deemed to be acting as Prepay LLC's agent with regard to scheduling Assigned Energy.

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

(e) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, Prepay LLC 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 Energy purchased by Prepay LLC pursuant to the Assigned Rights and Obligations, Prepay LLC 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 Energy Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay Prepay LLC for any amounts by which such Receivables exceed any Delivered Energy Payment Obligations then due and owed to PPA Seller.

14. 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.

15. 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 Prepay LLC 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 Prepay LLC’s rights or obligations under this Agreement (provided that Prepay LLC shall not have a right to terminate under this clause (b) to the extent that Prepay LLC (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 Prepay LLC 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 Prepay LLC fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Energy Payment Obligation and such failure continues for five Business Days following receipt by Prepay LLC 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 Prepay LLC, and with a copy to PPA Buyer or PPA Seller, as applicable; and

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 Prepay LLC 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) Prepay LLC 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 Prepay LLC 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 Prepay LLC 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 Prepay LLC, and with a copy to PPA Buyer or PPA Seller, as applicable.

(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 Prepay LLC 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 Prepay LLC to PPA Buyer, provided that (i) Prepay LLC shall remain responsible for the Delivered Energy Payment Obligation with respect to any Assigned Energy delivered to Prepay LLC 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.

16. Representations and Warranties.

(a) **Copy of PPA.** PPA Seller and PPA Buyer represent and warrant to Prepay LLC 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 Prepay LLC 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 Prepay LLC 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.

17. Counterparts.

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

18. 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.

19. Amendments.

No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing and executed by each of the Parties.

20. 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, a 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.

21. Governing Law, Waiver of Jury Trial, Arbitration.

(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 law 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) **Waiver of Right to Trial by Jury.** Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement.

(c) **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of Financing Party and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall select one (1) person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, Financing Party, PPA Buyer and PPA Seller are the "**Arbitration Parties**"), provided that if the arbitration pertains to matters and disputes solely as between PPA Buyer and Financing Party, and PPA Seller is neither asserting nor defending a claim in relation thereto, then each of Financing Party and PPA Buyer shall select one (1) person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, only Financing Party and PPA Buyer are the "**Arbitration Parties**"). The JAMS appointed arbitrator shall serve as the chairperson (the "**chairperson**"). If any of the Arbitration Parties are unable or fail to select one (1) person to act as arbitrator, such arbitrator shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Arbitration Party or have any direct pecuniary interest in any Arbitration Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Arbitration Parties. The Arbitration Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the

Arbitration Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three (3) arbitrators and all other expenses charged by JAMS shall be shared equally between or among the Arbitration Parties, as the case may be. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Arbitration Party or Arbitration Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(c) by the prevailing party in connection with the arbitration, and the non-prevailing Arbitration Party or Arbitration Parties shall also be liable to the prevailing Arbitration Party or Arbitration Parties for the compensation and expenses of the three arbitrators and all costs charged by JAMS. Notwithstanding the foregoing provisions of this Section 11(c), any costs incurred by an Arbitration Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Arbitration Party against whom such court order is obtained. The award shall be final and binding on the Arbitration Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(d) **Judicial Reference.** Without limiting the provisions in Section 11(c), if Section 11(c) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "Dispute") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(d)(1).

i. **Notice of Dispute.** Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**"; and together with the Disputing Party, the "**Dispute 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**"). If the Notice of Dispute makes no claim or assertion against one of the Responding Parties, and such Responding Party, in making its Dispute Response does not make or assert a claim against either the Disputing Party or the other Responding Party and states that it has no interest in the Dispute, then such Responding Party shall not participate in the resolution of the Dispute and shall not be a "**Dispute Party**" for purposes of this Section 11(d). Thereafter, the Dispute Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Dispute Parties do not resolve the dispute by unanimous agreement within sixty (60) days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Dispute Party may provide to the other Dispute Party(ies) written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 11(d).

ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of Financing Party and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall nominate one (1) referee, provided that if PPA Seller is not a Dispute Party, then each of Financing Party and PPA Buyer shall nominate (1) referee, and PPA Seller will not nominate a referee. The two (2) referees (the “**Party-Appointed Referees**”) shall unanimously appoint one (1) additional referee (the “**Additional Referee**”, together with the Party-Appointed Referees, the “**Referees**”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Additional Referee shall be an active or retired California state or federal judge (the “**Head Referee**”). Each of the Party-Appointed Referees and the Additional Referee shall be impartial and independent of each of the Dispute Parties and of the other referees and not employed by any of the Dispute Parties in any prior matter.

(A) If the Party-Appointed Referees are unable to agree on the Additional Referee within 45 days from delivery of the Impasse Notice, then the Additional 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 Dispute 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, on the one hand, and PPA Seller, on the other hand, shall have one (1) preemptory challenge to the referee selected by the Court, provided that if PPA Seller is not a Dispute Party, then each of Financing Party and PPA Buyer shall have one (1) preemptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Dispute 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 Head 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 Dispute Parties, or if they cannot agree, as determined by the Head Referee after discussion with the Dispute Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Head 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 Dispute Parties, or if not agreed by the Dispute Parties, by the Head 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 Dispute 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 Dispute Party making such a request shall have the obligation to arrange for and pay the court reporter.

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

(e) Expenses. The Dispute Parties 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 shared equally between or among the Dispute Parties, as the case may be.

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: _____

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

ENERGY PREPAY [], LLC

By: Morgan Stanley Capital Group Inc., its Manager

By: _____
Name: _____
Title: _____

Appendix 1
Assigned Rights and Obligations

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

Assigned Delivery Point: [____]

Day-Ahead Average Price: [____]

Further Information: [Include, if any]

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

Appendix 3
Copy of PPA
[To be attached.]

EXHIBIT A5

PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this “Agreement”) is made and entered into as of [_____, 2024, by and between California Community Choice Financing Authority (“CCCFA”) and San Diego Community Power (“SDCP”), with respect to the Prepaid Energy Project (defined below). CCCFA and SDCP may be referred to individually herein as a “Party” and collectively as the “Parties”. Capitalized terms used herein (including in the following Recitals) have the meanings given to such terms in Section 1.

W I T N E S S E T H:

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

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

WHEREAS, CCCFA’s purpose is to assist its Members (as defined in the Joint Powers Agreement), including SDCP, by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined in the Joint Powers Agreement) and entering into related contracts with Members; and

WHEREAS, CCCFA and SDCP are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to SDCP under the terms set forth therein; and

WHEREAS, in order to provide such Energy to SDCP under the Power Supply Contract, CCCFA is entering into the Prepaid Energy Sales Agreement with Prepay [] LLC, a Delaware limited liability company (the “Energy Supplier”), under which it will make a prepayment to the Energy Supplier for the purchase and delivery of such Energy; and

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

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

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

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

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

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

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

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

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

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

“Base Energy” means Energy to be delivered to an Energy Delivery Point.

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

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

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

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

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

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

“Energy Supplier” means Prepay [] LLC, a Delaware limited liability company.

“Indenture” means the Trust Indenture, dated as of [_____] 1, 2024, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

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

“Joint Powers Agreement” means the Joint Powers Agreement by and among the Members of CCCFA named therein, including SDCP, providing for the creation, purposes and powers of CCCFA, as the same may be amended or supplemented from time to time in accordance with its terms.

“Power Supply Contract” means the Power Supply Contract, dated [_____] 1, 2024, between CCCFA and SDCP relating to the purchase by SDCP of Energy acquired by CCCFA pursuant to the Prepaid Energy Sales Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Prepaid Energy Sales Agreement” means the Prepaid Energy Sales Agreement, dated [_____] 1, 2024, between CCCFA, as buyer, and the Energy Supplier, as seller, as amended, restated, supplemented or otherwise modified from time to time.

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

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

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

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and Energy Supplier.

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

“SDCP” means San Diego Community Power, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.

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

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

“Trustee” means [_____], and its successors as Trustee under the Indenture.

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

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

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

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

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Energy Sales Agreement that is attributable to an Assignment Agreement(s) entered into by SDCP shall be attributable to SDCP under the Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to SDCP’s Assigned Delivery Point and the transfer of other Assigned Product to SDCP, or (b) any accounting for under-deliveries or over-deliveries or other record-keeping requirements with respect to any Assigned Energy and other Assigned Product, all of which shall be the sole responsibility of SDCP pursuant to the related Assignment Agreement(s).

Section 4. Qualified Use; Remarketing of Base Energy. As provided in the Power Supply Contract, any portion of SDCP’s Contract Quantity that is not delivered as Assigned Energy is required to be delivered as Base Energy and simultaneously remarketed by Energy Supplier pursuant to the Prepaid Energy Sales Agreement. SDCP shall be responsible for accounting for any portion of SDCP’s Contract Quantity deemed delivered as Base Energy and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements. SDCP agrees to provide to CCCFA any information reasonably requested by it in order to comply with any reporting or record-keeping requirements related to such deemed deliveries and remarketing of Base Energy, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Prepaid Energy Sales Agreement, the Indenture or the Tax Certificate and Agreement.

Section 5. CCCFA Commodity Swap. CCCFA shall not take any action to terminate or designate the early termination of the CCCFA Commodity Swap except in accordance with written instructions of SDCP or unless otherwise required under the terms of the Prepaid Energy Sales Agreement or the Indenture.

Section 6. Directions, Consents and Waivers. CCCFA may be requested or required from time to time to provide certain directions, consents, or waivers under the terms of the Prepaid Energy Sales Agreement, the Indenture and the Re-pricing Agreement. In the event any such direction, consent or waiver relates solely to the Contract Quantity and/or Power Supply

Contract of SDCP and no event of default has occurred and is continuing with respect to SDCP under the Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by SDCP.

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

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

(a) Under the Bond Indenture, Operating Expenses (as defined in the Indenture) relating to the Clean Energy Project are to be paid from amounts deposited monthly into the Administrative Fee Fund for each annual period ending on [January 1] of each year. CCCFA agrees that amounts allocated on behalf of SDCP annually into the Administrative Fee Fund equal to [\$_____] in the aggregate for each such annual period (the “Project Administration Fee”), shall be allocated to pay such Operating Expenses as the same become due and payable. In the event such allocated amounts available in the Operating Fund are not sufficient to pay such Operating Expenses when due, SDCP agrees to pay such additional amounts for deposit into the Administrative Fee Fund as are necessary to pay such Operating Expenses upon receipt of notice of the amount due from the Trustee or CCCFA.

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

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

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

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

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

CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

EXHIBIT A6

MEMORANDUM OF UNDERSTANDING (“MOU”)

Date: October 1, 2024

To: Garth Salisbury
Treasurer/Controller
California Community Choice Financing Authority
Gsalisbury@cccfa.org
(415) 464-6037

From: Dr. Eric Washington
Chief Financial Officer
San Diego Community Power
ewashington@sdcommunitypower.org
(619) 657-0403

Re: California Community Choice Financing Authority Prepay Transaction on behalf of San Diego Community Power

Overview

The California Community Choice Financing Agency (“CCCFA” or the “Issuer”) seeks to procure a 30-year supply of energy from Energy Prepay IV, LLC through the issuance of Clean Energy Project Revenue Bonds (the “Bonds”) issued by CCCFA. CCCFA will sell all the Prepaid Energy acquired from this transaction to San Diego Community Power (the “Project Participant”).

Rating Agency Fees and Green Bond Opinion Fee

Rating Agency Fees and expenses (“Rating Agency Fees”) are paid from the proceeds of the Bonds. However, unlike most of the other fees associated with the issuance of the Bonds, payment of the Rating Agency Fees is not contingent upon the issuance of the Bonds.

In the event the Bonds are not issued, and there remains a Rating Agency Fee payable to Moody’s Investors Service (the “Rating Agency” or “Moody’s”), the Project Participant agrees that it will be liable for the costs and make direct payment to Moody’s for such fees.

In the event a Green Bond Second Opinion is obtained, and the Bonds are not issued, the fee payable to the Green Bond Second Opinion provider (the “Green Bond Fees”) shall be incurred by the Project Participant and in such event, to the extent the Green Bond Fees were already paid by CCCFA, the Project Participant agrees to reimburse CCCFA.

Sincerely,

SAN DIEGO COMMUNITY POWER

By: _____
Dr. Eric Washington
Chief Financial Officer

ACCEPTED AND AGREED

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____
Garth Salisbury
Treasurer/Controller

Date: October 1, 2024

EXHIBIT B

Additional Project Documents

(see attached)

EXHIBIT B1

APPENDIX A

SAN DIEGO COMMUNITY POWER

Introduction

San Diego Community Power (“SDCP”) is a joint powers authority organized and existing under the Joint Exercise of Powers Act (constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time) (the “*Joint Powers Act*”), as a “community choice aggregator” (“CCA”) as defined in Section 331.1 of the Public Utilities Code of the State of California, as amended (the “*Public Utilities Code*”). For a general description of “community choice aggregators” in California, see the section “COMMUNITY CHOICE AGGREGATORS” in this Official Statement.

Formation, History, and Purpose of SDCP

General. SDCP was created on October 1, 2019, under the name “San Diego Regional Community Choice Energy Authority” as a CCA in California under a Joint Powers Agreement, as amended, by and among the cities participating in SDCP and named therein (the “JPA”).

San Diego Community Power (SDCP) was established to provide electricity services at competitive rates to residents and businesses within the municipal boundaries of its member public agencies. As part of a Joint Powers Authority (JPA), SDCP focuses on delivering a cleaner energy portfolio and achieving energy consumption reduction goals.

Key priorities include:

- **Promotion of Renewable and Distributed Energy Resources:** SDCP encourages the use and development of local, cost-effective, renewable, and distributed energy sources, supporting local power generation and storage initiatives.
- **Exclusion of Coal and Avoidance of Nuclear Contracts:** The organization is committed to excluding coal and avoiding nuclear energy in its procurement strategies.
- **Economic and Workforce Development:** SDCP aims to benefit the region economically by supporting workforce programs and development initiatives. This helps promote long-term electric rate stability and energy reliability for residents and businesses.
- **Community Ownership and Energy Reliability:** SDCP promotes personal and community ownership of renewable generation and energy storage resources, fostering a sustainable and energy-independent future.

Currently, SDCP procures clean energy from solar, wind, geothermal, large-hydro, and biomass sources.

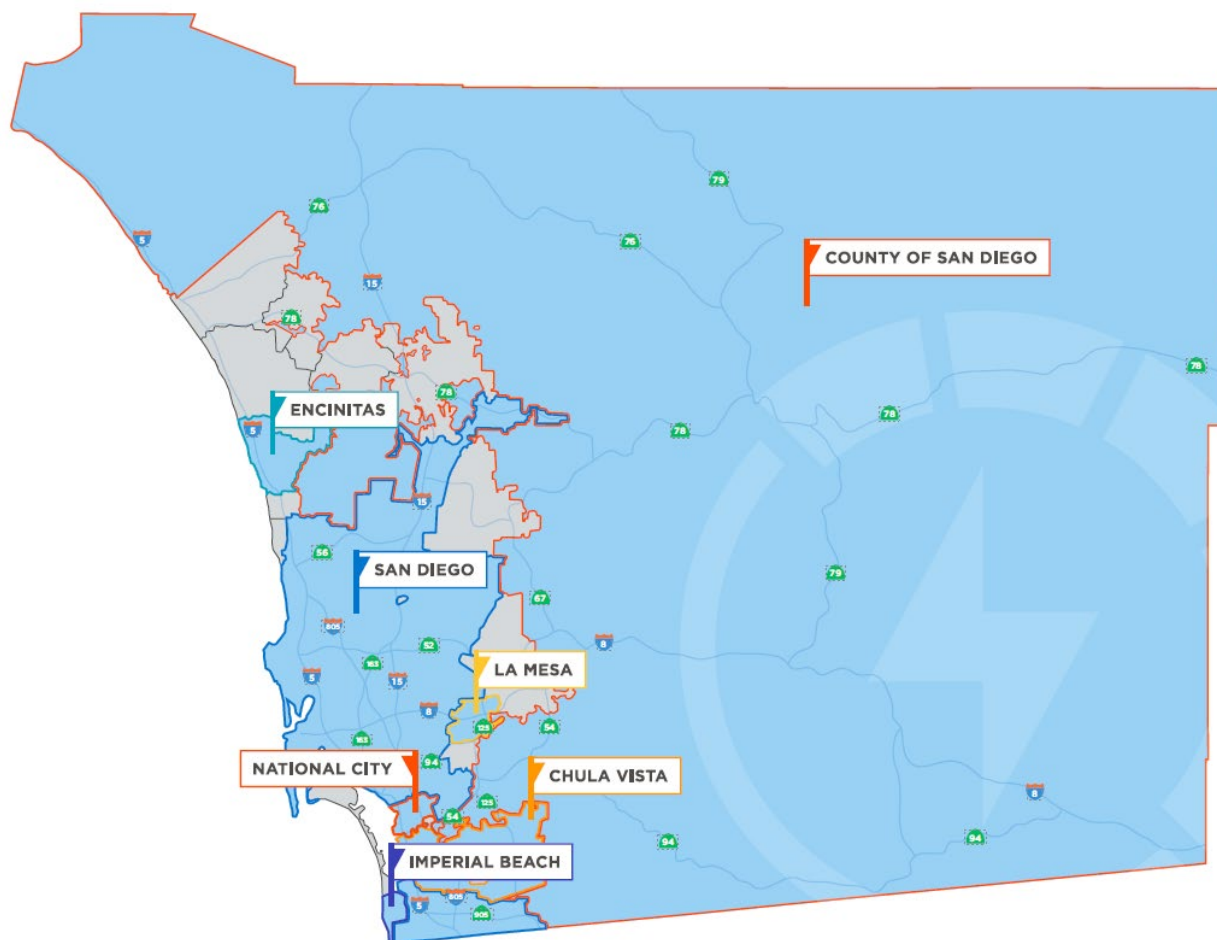
The parties to SDCP’s JPA consist of local governments whose governing bodies elect to join SDCP. Under the Public Utilities Code, when new parties join SDCP, all electricity customers in their jurisdiction, except those served under California’s Direct Access Program, automatically become SDCP’s default customers for electric generation, provided that customers are allowed to “opt-out.”

Commencement of Service and Expansion. SDCP began operations in March 2021 by serving approximately 600 municipal accounts. SDCP enrolled approximately 72,000 municipal and business customers in June 2021 (actual retail electricity sales in 2021 approximated 2,040,704 MWh and increased by approximately 176% to 5,624,296 MWh in 2022). SDCP enrolled approximately 700,000 residential customer accounts throughout 2022 across the city limits of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach. SDCP enrolled approximately 180,000 residential and non-residential customer accounts in National City and Unincorporated areas of San Diego County in 2023.

Service Area

SDCP currently serves seven jurisdictions in the County of San Diego. These jurisdictions include six cities (including San Diego, Chula Vista, Encinitas, La Mesa, Imperial Beach, and National City) and the unincorporated communities of the County of San Diego. SDCP is responsible for acquiring electric power for its service area.

Service Area Map. The service area of SDCP is shown on the map below:



Governance and Management

Board of Directors. SDCP is governed by a seven-member board of directors (the “*Board of Directors*”), with a board member from each of the seven jurisdictions in the County of San Diego. SDCP’s Board of Directors has the rights and powers to set rates for the services SDCP furnishes, incur indebtedness, and issue bonds or other obligations. SDCP’s local government structure ensures public transparency. The Board of Directors meets monthly to discuss matters related to the operation of SDCP. All meetings are open to the public, and public comments are encouraged.

Management. Karin Burns, Chief Executive Officer. As Chief Executive Officer of SDCP, Karin Burns leads the 2nd largest community choice aggregator in California with a team of 65 mission-driven professionals providing affordable, clean electricity to more than 950,000 customer accounts in San Diego County. In this capacity, she oversees a \$1.1 billion budget, ensures sufficient and reliable clean power procurement, and develops and executes the organization’s strategic plan in collaboration with the Board and staff.

Before becoming CEO, Karin most recently served as Vice President of Corporate Development and Regional Vice President of the Pacific Region at Franklin Energy, a national provider of energy efficiency, demand response, electrification, and grid optimization solutions. Before Franklin Energy acquired its assets, Karin served as Chief Executive Officer of Build It Green, where she oversaw a team of 40+ personnel, managed a diverse set of programs across energy efficiency, workforce development, low-income solar and energy efficiency direct installation, healthy homes and reach codes for utilities and local governments.

Before that, Karin served as Executive Director of the nonprofit Code REDD, an environmental company she built into a globally recognized brand. She spearheaded strategic planning and operations, sourced funding from USAID and the McArthur Foundation, and built the successful Stand for Trees campaign.

Before leading high-growth organizations, Karin was a Managing Director at Ambata Capital, where she managed investment and advisory projects in electric vehicles, sustainable agriculture, green buildings, and clean energy. She was previously a Vice President at Gulf Capital, where she sourced, conducted due diligence, fundraised, and invested in alternative energy, new media, and energy services companies across the GCC. She has served on several boards and advisory boards of companies and investment funds from the US to Asia. She began her M&A and corporate finance career at JPMorgan Chase in Hong Kong and GE Equity in London.

Karin earned a Fulbright Scholarship to India, speaks several languages, and spent several years overseas in emerging markets from Brazil to China. She has earned Certificates in Energy Innovation and Innovation & Entrepreneurship from Stanford School of Engineering, an M.P.A. in international development from Harvard University, an M.B.A. in finance with distinction from Edinburgh Business School, and a B.A. with Honors from Duke University.

Dr. Eric Washington, Chief Financial Officer. Dr. Eric Washington manages the annual operating budget, capital investment plan, investment portfolio, and risk management function. He helps SDCP balance decarbonization goals with the mandate of affordable clean energy at competitive rates. Eric led the development of strategies for SDCP that strengthened the organization’s net asset position and cash flow. He was also critical in growing SDCP’s net revenue from \$15 million to over \$1 billion in two years. Among Eric’s many contributions to

SDCP, he spearheaded credit facility negotiations, increasing SDCP's credit access from \$35 million to \$150 million.

At various points in his career, Eric has managed the administration and compliance of a \$350 million nonprofit finance program, managed a \$158 million real estate loan portfolio, including construction finance to developers and acquisition finance to real estate investors, and built and managed a diverse team of professionals who provided corporate fiscal analyses, compliance monitoring, and finance reporting in support of several loan officers at various production offices.

Before his role at SDCP, Eric served as a military leader in the U.S. Navy for 26 years, fostering collaboration among diverse teams to meet organizational objectives. Eric also has 25 years of experience in corporate banking and finance. He has served as a vice president, senior credit manager, senior portfolio manager, and senior relationship manager at several regional banking institutions (including California Bank & Trust and Torrey Pines Bank). Eric received his Doctor of Education (Ed.D.) from San Diego State University, M.B.A. from Webster University, and a Bachelor of Science from Southern Illinois University, Carbondale.

Jack Clark, Chief Operating Officer. Jack Clark oversees the day-to-day financial and operational management of SDCP. He works closely with the CEO and CFO to operationalize and execute the strategy and vision for SDCP. Jack has over twenty years of overseeing energy, environmental, and cultural programming directed at developing solutions to climate change. Jack has overseen large-scale clean energy market transformation initiatives that help stabilize the relationship between people and the environment.

Before his role at SDCP, Jack was Vice President of Partnerships for commercial vehicle electrification infrastructure at Ideanomics. He was also Senior Director of Customer Programs at Clean Power Alliance of Southern California, California's largest community choice aggregator. Before his time at Clean Power Alliance, Jack was Vice President of Sustainable Energy Use at DNV GL.

Before that, Jack was the Deputy Director of the Energy & Sustainability Division at the City of San Diego, where he was responsible for implementing the City's comprehensive energy strategy, working with staff, other City departments, and community members to incorporate a broad range of energy efficiency, clean, renewable generation, and environmental quality issues into City operations and community programming. He oversaw the city operations of energy use over 3500 accounts, billing, rates, Municipal Energy Plan, community energy and sustainability programs, compliance with the City Climate Action Plan, and Community Choice Aggregation feasibility analysis on San Diego's goal of reaching 100% Renewable Electricity by 2035.

Prior to his role with the City of San Diego, Jack was the Director of Programs at the Center for Sustainable Energy, where he led the organization's growth from a regional to a national nonprofit focusing on strategy, development, and execution of renewable energy, energy efficiency, clean transportation, distributed generation, and advanced clean energy market transformation initiatives. Jack received a Master of Administration in Sustainable Planning and a Bachelor of Science in Anthropology and Environmental Sciences, both from Northern Arizona University.

Veera Tyagi, General Counsel. Veera Tyagi serves as the General Counsel for SDCP. Veera has nearly twenty years of legal experience, primarily as in-house counsel for regulatory agencies. Veera has handled various matters, including advising and ensuring compliance with the California Environmental Quality Act, the Federal and State Clean Air Acts, and other environmental laws,

and in litigating actions in both federal and state courts that are brought under those laws. Veera also has extensive experience advising on general governmental law issues, such as compliance with the Public Records Act, the Brown Act, and contract laws. Veera is a member of the State Bar of California.

Byron Vosburg, Chief Commercial Officer. Byron Vosburg is responsible for managing the organization's energy portfolio. His role includes overseeing bilateral purchases and sales of electricity through short-, medium-, and long-term contracts, as well as developing wholesale energy generation and battery storage facilities to meet SDCP's environmental and local development goals. Byron also administers requests for proposals and offers for energy projects, schedules electricity load and generation into the California Independent System Operator (CAISO) markets, and ensures compliance with voluntary objectives and regulatory requirements, such as the Renewables Portfolio Standard (RPS). He also participates in the CAISO-administered Congestion Revenue Rights (CRRs) market and manages compliance with the California Public Utilities Commission's (CPUC) Resource Adequacy (RA) requirements.

Byron has thirteen years of experience in California's electric utility and Community Choice Aggregation (CCA) industries and is highly skilled in developing and executing procurement strategies for CCAs. He began his career at Pacific Gas & Electric (PG&E) in the Energy Procurement group, where he worked in various departments, including Energy Contract Management & Settlements, Real-Time Operations, and Renewable Solicitations. In 2016, Byron joined Marin Clean Energy (MCE) and took on power supply resource planning, origination, and contract administration responsibilities. From 2018 until he joined SDCP, Byron was with The Energy Authority (TEA), which focused on supporting the start-up and expansion of Clean Power Alliance (CPA). At TEA, he managed short-term procurement efforts, including solicitation-based and bilateral procurement of energy hedging products, resource adequacy, renewable and carbon-free energy, and energy storage transactions, overseeing more than \$1.7 billion in transactions.

Byron holds a Bachelor of Science in Biological Sciences and a Master of Science in Civil and Environmental Engineering with a concentration in Atmosphere and Energy Studies from Stanford University.

Customers

General. SDCP currently provides energy to approximately 955,488 municipal, residential, commercial, and industrial accounts in its service area. SDCP's current customer base mix is approximately 40% residential, 38% medium and large commercial/industrial, 19% small commercial, and 3% agricultural and lighting-based.

Customer Energy Choices. As part of its ongoing efforts to provide clean energy at the greatest value for its customers, SDCP offers four service plans: PowerBase, PowerOn, Power100, and Power100 Green+. PowerBase is SDCP's most affordable service plan and is currently 45% renewable. PowerOn is 54% renewable. Power100 and Power100 Green+ are 100% renewable, carbon-free, and the latter is Green-e® certified. PowerOn is SDCP's default electricity service offering from a total annual bill perspective. It is priced approximately 3% above SDG&E. Most customers within SDCP's service territory are automatically enrolled in PowerOn, with the exception of the City of Encinitas, whereby per City Council decision, customers within its city

limits are automatically enrolled in SDCP's Power100 service, which costs \$0.01/kWh more than PowerOn.

SDCP also offers Power100 and Power100 Green+, meaning that 100% of the power comes from clean, renewable sources. Customers can choose to opt up to these options and invest in 100% renewable and carbon-free electricity at a slight premium. These options enable SDCP's customers to take a more significant step towards reducing their carbon footprint. Power100 Green+ provides 100% renewable, carbon-free, and Green-e® certified energy for businesses seeking LEED certification or requiring Green-e® certification to meet their corporate social responsibility goals. Power100 Green+ costs \$0.02 per kWh, more than the standard PowerOn service level. Power100 Green+ allows customers to meet their organization's reliability standards. Residents and businesses that don't require specific certification can still get 100% renewable and carbon-free power through Power100.

In 2024, the average SDCP residential customer is projected to use 334 kWh per month so that PowerOn will cost the average residential customer \$6 per month above PowerBase. Compared to SDG&E's rates, PowerOn is expected to cost about \$4.50 per month extra for a typical residential customer. Compared to SDG&E's rates, Power100 is expected to cost about \$8 per month extra for a typical residential customer.

Customer Enrollment. Most customers within SDCP's service territory are automatically enrolled in PowerOn, except for the City of Encinitas, wherein the City Council voted to automatically enroll customers within its city limits in SDCP's Power100 service. Once enrolled, customers may opt up to Power100 or Power100 Green+ service, opt down to PowerBase service, or opt out of SDCP's service.

New Customers. FY 2023-24 was SDCP's first full year of operations, with its seven-member jurisdictions reaching full enrollment. There are no near-term plans for expansion.

Customer Election to Opt-out of Service. Customers have the right to opt out of SDCP service at any time and will not be charged any fees by SDCP if they opt out or cancel electric services. Customers who opt out before starting SDCP service or within the first 60 days of SDCP service may return to SDCP service at any time. Customers who opt out after the first 60 days of service with SDCP will be prohibited by SDG&E from returning to SDCP for one year and will be charged a one-time customer re-entry fee by SDG&E as well as be required to choose one of the two options: an immediate return to SDG&E service, or a 6-month return.

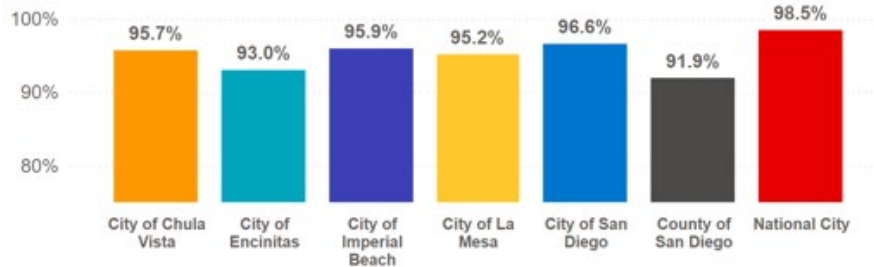
Cumulative Opt-Out Rate and Customer Retention. As of September 30, 2024, SDCP is serving a cumulative total count of 955,488 active accounts. Customers with newly established accounts or who have moved into a new service address within any of SDCP's member jurisdictions receive two post-enrollment notices through the mail at their mailing address on file within 60 days of their account start date to notify them that they have defaulted to SDCP electric generation service.

The following graphic illustrates SDCP's opt-out rate and customer retention data through September 30, 2024.

Enrolled Accounts	Participation Rate
955,488	95.5%

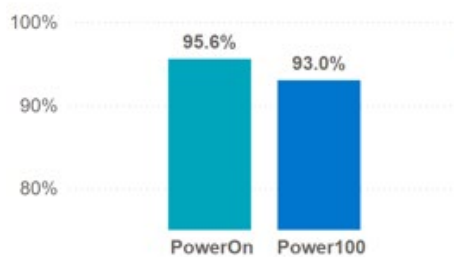
Participation

Participation by Jurisdiction

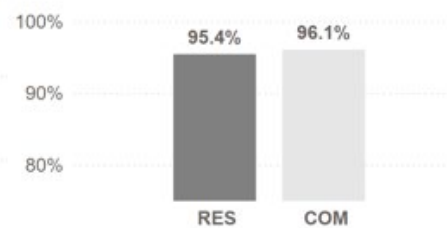


Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,604	94,359	95.7%
City of Encinitas	Power100	28,564	26,568	93.0%
City of Imperial Beach	PowerOn	10,909	10,467	95.9%
City of La Mesa	PowerOn	29,432	28,008	95.2%
City of San Diego	PowerOn	623,466	602,131	96.6%
County of San Diego	PowerOn	190,112	174,787	91.9%
National City	PowerOn	19,469	19,168	98.5%
Total		1,000,556	955,488	95.5%

Participation by Default Service Option



Residential vs Commercial Participation



Service Rates

General. SDCP electric generation rates are managed to provide cleaner electricity at competitive rates. SDCP's Board of Directors determines rates and is not regulated by the California Public Utilities Commission ("CPUC"). Any rate changes will be adopted at duly noticed public meetings of the SDCP Board of Directors. Under the terms of the Clean Energy Purchase Contract, SDCP covenants that it will establish, maintain, and set rates and charges to provide revenues sufficient to enable it to pay any amounts payable from the revenues of its operations and to keep any reserves as required by SDCP's reserve policies.

Determination of Rates for Energy. A customer's cost of electric service is determined by SDCP's charges for energy and SDG&E charges for transmission, distribution, and other non-by-passable charges. Changes to SDG&E or SDCP rates will impact cost comparisons between SDCP and SDG&E. SDG&E charges SDCP customers a monthly Power Charge Indifference Adjustment ("PCIA"), which can vary annually based upon several market factors, including benchmarks for regional energy costs resource adequacy, the year in which the community joined SDCP and other considerations, as well as a Franchise Fee Surcharge. SDCP has already accounted for these additional charges when calculating its commodity rates. Financial assistance programs like CARE (California Alternative Rates for Energy), FERA (Federal Electric Rate Assistance), and Medical Baseline Allowance remain the same as those of SDCP.

Current and Historical Rate Information. SDCP rates are designed to cover the costs of energy, resource adequacy, and operating costs, fund customer programs, and meet SDCP's reserve and liquidity goals [described in its Reserve Policy].

On January 18, 2024, the Board of Directors approved rates for SDCP that included:

- A 17.7% year-over-year average decrease, from 2023 to 2024, in SDCP electricity generation rates across all customer classes.
- A 23.2% year-over-year average decrease, from 2023 to 2024, in SDCP electricity generation winter rates and a 12.3% year-over-year average decrease in summer rates across all customer classes.
- Renewable content base product at 52% or 55% with zero or low carbon with SDCP versus a base product at 44.8% with SDG&E's most recent 2022 Power Content Label, published in September 2023.
- Allows SDCP to maintain its current reserve levels and work toward a 180-day cash-on-hand reserve target. This will provide financial stability and support in securing a credit rating.

Subsequently, on May 30, 2024, the Board of Directors approved the new PowerBase product offering that was effective July 1, 2024, which provided:

- A 2.5% discount compared to SDGE's current rates as of March 1, 2024, for July through December 2024.
- A pathway for customers to return to SDCP's standard service, PowerOn, or opt-up to Power100 more easily than if they opted out of SDCP service entirely.
- An affordable option that is cleaner than the competition.
- 100% renewable energy by 2035 or sooner through customer retention, especially for price-sensitive customers.

On May 30, 2024, the Board of Directors approved the Power100 Green+ product offering, a stand-alone, 100% renewable, carbon-free service that is Green-e® certified. Power100 Green+ is priced as a \$0.02/kWh adder to the PowerOn service and allows SDCP customers to earn LEED Tier 2 or 3 points in the renewable energy category. Initially, Power100 Green+ was only available to Commercial and Industrial customers.

California Renewable Portfolio Standards and Other Regulations

General. Community choice aggregators such as SDCP are “load-serving entities” (“LSEs”) and, as such, are required to comply with California’s Renewable Portfolio Standard, Resource Adequacy requirements, and Power Source Disclosure requirements described below.

Renewable Portfolio Standard. California’s Renewable Portfolio Standard (“RPS”) requires LSEs to supply their retail sales with minimum quantities of eligible renewable energy. Senate Bill 100 directs all LSEs to procure 60% of their portfolios from RPS-eligible resources by 2030 and 100% of their retail sales from zero-carbon resources (or eligible renewable resources) by 2045. In 2022, SDCP met 59.3% of its total retail sales with eligible RPS resources, above the 2022 RPS percentage target of 38.5%.

Resource Adequacy. Resource Adequacy (“RA”), a California program jointly administered by the CPUC and the California Independent System Operator (“CAISO”), directs LSEs to secure forward capacity and offer it into the CAISO’s Day-Ahead and Real-Time markets to ensure that there will be enough supply in the suitable locations and with sufficient ramping capability to meet load. The RA program comprises System RA, Local RA, and Flexible RA. Local RA obligations have been assigned to a Central Procurement Entity as of 2023. In addition, per CPUC Decisions 19-11-016, 21-06-035, and 23-02-040, LSEs are required to procure “Incremental System Capacity,” which is RA capacity from non-emitting, storage, and renewable resources that are in addition to the resources identified on a baseline list respective to each Decision. SDCP has a strong track record of meeting its RA obligations, falling short only during periods of extreme resource scarcity. It expects to meet its future RA obligations through its Energy Risk Management Policy to the extent that supply is available in the bilateral markets.

Power Source Disclosure. California law requires LSEs to disclose the types of power resources used to supply retail sales. This mandate, known as the Power Source Disclosure Program (“PSD”), is a consumer information program the CEC manages annually. The Power Content Label (“PCL”) is a crucial output of the PSD program. The PCL is an LSE-specific document that shows the breakdown of power resource types for each of the LSE’s energy products used to serve retail load and a breakdown of resource types for the overall California grid. The PCL is distributed to customers each year.

Energy Demand

Long-Term Load Forecast. SDCP’s long-term load forecast is a projection of the electricity that SDCP’s customers will consume. SDCP’s long-term load forecast considers the number and types of customers that SDCP expects to serve, historical electricity use patterns, temperature, and other weather conditions, as well as trends in energy efficiency, behind-the-meter, rooftop solar and electric vehicle adoption, appliance electrification, and other factors. The forecast is stated in terms of retail and wholesale load, which includes an estimate of electricity losses in the distribution system.

The table below shows SDCP’s long-term retail and wholesale load forecast for 2023-2035.

Table 1: SDCP's 2023-2035 Load Forecast (GWh)

Year	Load Forecast
2023	7,422.00
2024	7,932.00
2025	7,979.31
2026	8,022.80
2027	8,065.19
2028	8,107.78
2029	8,153.91
2030	8,207.38
2031	8,274.38
2032	8,324.52
2033	8,381.84
2034	8,427.34
2035	8,476.83

Sources of Energy

General. In its procurement of energy supplies, SDCP prioritizes using and developing local renewable resources, stimulating local job creation through various programs and development, promoting personal and community ownership of renewable resources, and promoting long-term electric rate stability and energy reliability for residents and businesses.

Energy Purchases. During the ordinary course of business, SDCP purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers, generation credits, load, and other charges stemming from SDCP's participation in the CAISO's centralized market.

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (“PPAs”) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with a specific revenue stream against which they can finance upfront capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while providing cost certainty around which SDCP can develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040. Over the past 18 months, SDCP staff released two RFPs for eligible Renewable Energy resources, an RFP for Stand Alone Storage projects in pursuit of long-term contracts for renewable energy. It evaluated other contracting opportunities to meet SDCP's procurement goals. The SDCP Board has approved contracts for over 1,600 MW of renewable generation and over 1,000 MW of storage capacity. Staff remain negotiating with several other developers for additional resources expected to be online between 2025 and 2029. Under CAISO's revisions to their cluster study process for interconnecting future projects, staff are issuing an RFP for CAISO Cluster 15 projects, which will serve to select renewable and storage

projects that SDCP is most interested in getting studied by the CAISO. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions before entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) can agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

SDCP also has an open request for information regarding local projects (“*RFI*”). The RFI has yielded eight board-approved contracts for local generation and storage facilities in the last twelve months. SDCP also released a request for offers (“*RFO*”) for distributed renewable energy resources (“*DERs*”), which focuses on a broad range of distribution-level renewable projects within San Diego County.

Energy Load and Supply Risk Management. Through SDCP’s Energy Risk Management Policy, SDCP measures and updates its risks using various tools that model programmatic financial projections, market exposure, risk metrics, and short-term budget updates. The following items are measured, monitored, and reported:

- Mark-to-Market Valuation – marking to market is determining the current value of contracted supply.
- Exposure Reporting – calculates the notional dollar risk exposure and value at risk of open portfolio positions at current market prices.
- Open Position Monitoring—SDCP calculates/monitors its open positions for all energy and capacity products monthly. If energy open positions for the month following the then current month (prompt month) exceed 10% of the load, SDCP will solicit market energy to close open positions and make a commercial decision to close the position.
- Counterparty Credit Exposure – calculates the notional and mark-to-market exposure to each SDCP counterparty by deal and in aggregate. Counterparty exposure reporting includes contingent collateral posting risks arising from changes in market prices and other factors.
- Reserve Requirement Targets – no less than once per year, SDCP staff monitors SDCP’s reserves to ensure that they meet the targeted thresholds.

SDCP manages market price risk using its planning models, which define forecasted load, energy under contract, and SDCP’s open positions across various energy product types, including renewable energy (Portfolio Content Category I, II, and III), carbon-free energy, and system power relative to SDCP’s procurement targets.

Generally, SDCP manages its exposure to energy suppliers by exhibiting a preference for counterparties with Investment-Grade Credit ratings as determined by Moody’s or Standard and Poor’s and using security requirements in the form of cash or letters of credit. SDCP measures its mark-to-market counterparty credit exposure in a way consistent with industry best practices.

SDCP manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery and acquiring energy from a geographically and technologically diverse portfolio of generating assets (with a range of generation profiles generally complementary to how SDCP’s customers use electric power). Due to known production variability and supply uncertainty related to renewable and other carbon-free energy products,

SDCP includes planning margins in procuring such products to ensure that related targets/mandates are achieved.

SDCP manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators. These coordinators independently or jointly provide the systems and data necessary to forecast and schedule load using good utility practice. Load variability is also considered when establishing appropriate planning margins for renewable and carbon-free energy sources.

SDCP manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions, such as the California Community Choice Association. SDCP also regularly participates in regulatory rulemaking proceedings and legislative affairs to protect its interests.

Procurement. All contracting for energy and energy-related products for SDCP, including but not limited to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage, shall be referred to as “Energy Procurement.” SDCP procures energy and RA in a way that is consistent with its Energy Risk Management Policy. Procurement is conducted through market-based transactions for products including Fixed Price Energy, Portfolio Content Category 1 (“PCCI”) Renewable Energy, PCC2 Renewable Energy, Carbon-Free Energy, and RA Capacity, as well as through longer-term PPAs entered into under statutory requirements as well as voluntary long-term resource acquisition decisions made independently by SDCP under its Integrated Resource Plan or other Board or Director-approved strategies.

Short-term procurement is conducted through participation in the CAISO and bilateral markets. SDCP may use various methods to procure long-term contracts, including competitive solicitations, bilaterally negotiated agreements, or regulatory proceedings, with oversight, including shortlist approvals or procurement recommendations, provided by the Energy Contracts Working Group Committee of the Board. Specific long-term procurement (e.g., contract terms more significant than three years) is subject to Board approval.

Long-term Contracts. SDCP has contracted for ~1,174 MW of NQC procured to date for energy storage projects with expected commercial operations between 2024 and 2027. In the Table below, SDCP provides a list of projects it has contracted that include an energy storage component.

Developer/Project	Guaranteed Commercial Operation Date	NQC	Nameplate	Type
Ormat / Pomona 2	Online	9.1	10 MW	Storage (2-hour)
Arevon / Vikings Energy Farm	Online	9.0 (solar)	136.8 MW-AC Generating Facility and	Solar + Storage

		141.0 (storage)	145.5 MW-AC / 582 MWh Storage Facility	
Baywa / JVR Energy Park	10/31/26	58.6	90 MW-AC solar photovoltaic Generation Facility combined with a 70 MW-AC / 280 MWh-AC DC-coupled battery energy storage facility	Solar + Storage
NextEra / Yellow Pine	Solar: 10/1/25 Storage: 6/1/25	2.5 (solar) 26.3 (storage)	35 MW-AC Generating Facility and 35 MW-AC / 140 MWh Storage Facility	Solar + Storage
Ormat / Arrowleaf Solar and Storage	4/15/25	2.8 (solar) 26.3 (storage)	42 MW-AC Generating Facility and 35 MW-AC / 140 MWh Storage Facility	Solar + Storage
Arevon / Avocet	4/15/26	153.2	200 MW	Storage
NextEra / Desert Sands	4/1/27	52.3	60 MW	Long Duration Storage
Wellhead / CVEC2	6/1/26	38.3	49.7 MW	Storage
SBE / Athos		30	30 MW	Storage
SBE / Pelicans Jaw	4/1/27	176.5	440 MW (solar) 238.5 MW (storage)	Solar + Storage
Nobel Solar / Purple Sage	6/30/27	326.0	400 MW (solar) 400 MW (storage)	Solar + Storage
Avantus / Big Rock 2	12/31/27	74.0	74 MW	Storage
Aypa / Vidal	3/1/26	133.8	160 MW (solar) 160 MW (storage)	Solar + Storage
MRP / Border	6/1/26	10.0	52 MW	Storage (1-hour)
MRP / Enterprise	6/1/26	10.0	52 MW	Storage (1-hour)

Information Technology and Data Analytics

SDCP's Information Technology (IT) and Data Analytics Department comprises highly qualified professionals who handle all aspects of information technology management, cloud infrastructure, and cyber security. They are building a secure data platform that will enable and empower SDCP staff to develop full-scale in-house data management, data engineering, data science, and analytics capabilities. SDCP's IT and Data Analytics department initiated digital and data transformation in Q2 2024 and has brought many modern tools to improve business operations and staff productivity. SDCP IT, data analytics, and functional teams focus on developing core operational competencies such as an Energy Trade & Risk Management application or Distributed Energy Resource Management platform to deliver efficiencies, simplifications, and cost savings for SDCP customers. Since Q1, 2024, SDCP IT and Data Analytics department has hired several staff members to provide world-class information technology and data analytics capabilities to meet SDCP's clean energy goals.

SDCP's Director of IT and Data Analytics oversees and is accountable for developing additional IT policies and standards, including responsible Artificial Intelligence (AI) and Cyber Security, identifying risk areas, and helping all personnel comply with policies and standards. All SDCP staff are responsible for reporting any noncompliance to management. SDCP will make information technology accessible only to authorized employees or designated vendors as needed, and such information shall only be used for authorized agency purposes.

SDCP's IT and Data Analytics department has begun a holistic cyber security program leveraging the NIST 800 framework and ISO 27001 standards. The department has enabled multi-factor authentication for all user devices and access to all mission-critical systems. SDCP's current and new cyber security standards are helping minimize threats and exposure to its assets and information. SDCP additionally holds cybersecurity insurance coverage.

Financial Information

Revenues from Energy Sales and Operating Expenses. SDCP's operating revenues are from selling electricity to commercial and residential customers throughout its territory. SDCP reports its revenue net of uncollectible accounts. In alignment with SDCP's reserve policy and strategic goals, SDCP set rates in 2023 and 2024 sufficient to grow revenue and net income to reach its 180-day cash-on-hand goal. Additionally, the inclusion of the majority of customers from the City of National City and the County of San Diego for the entire year in FY 2022-23 resulted in an increase in revenue from FY 2021-22.

Other Sources of Revenue. In 2023, SDCP began receiving grant revenue from the California Public Utilities Commission Disadvantaged Communities-Green Tariff and Community Solar Green Tariff programs, which enable residential customers in disadvantaged communities who may be unable to install solar on their roof to benefit from a local solar project and receive a 20% bill discount. This funding originates from California Greenhouse Gas (GHG) Auction Proceeds and Public Purpose Program funds.

In 2024, SDCP was also awarded \$710,000 in grant funding from the California Department of Food and Agriculture to support its provision of technical assistance and refrigeration units to stock healthy food at stores throughout its service territory.

SDCP additionally derives revenue from investment income. As SDCP's Operating Reserves have grown, its investment income has also grown in lockstep as SDCP invests its reserves in interest-bearing accounts.

Financial Statements. For financial information related to SDCP, see the annual audited financial statements of SDCP or the fiscal years that ended June 30, 2023, and 2022, which are attached to this Official Statement as Appendix B.

Financial Reserves. SDCP will maintain Financial Reserves to be able to (a) meet SDCP's strategic objectives; (b) meet SDCP's strategic objectives; (c) secure, maintain, and improve a standalone investment grade credit rating; (d) secure favorable terms with vendors, including power producers; (e) satisfy working capital requirements; (f) adhere to contractual covenants; (g) provide funds to cover unanticipated expenditures and; (h) support rate stability.

Operating Reserve. SDCP maintains a reserve goal to secure 180 days of cash-on-hand held as unrestricted cash. Unrestricted cash equals total cash less cash held in accounts that are restricted from use (e.g., as collateral or by covenant). The contribution to Operating Reserves is determined through SDCP's annual budget process as defined in the agency's Budget Policy and SDCP's rate-setting process as defined in the agency's Rate Development Policy. To the extent that SDCP can meet operational expenses and maintain competitive rates, it will establish rates and adopt budgets to build and maintain reserves at or above the 180-day cash-on-hand target level.

Risk Management. SDCP maintains a comprehensive risk management framework to identify and mitigate credit, liquidity, market, operational, regulatory, and other risks associated with participation in the California energy market. The framework employs credit risk strategies, including a preference for transacting with investment-grade counterparties, establishing credit limits, and securing collateral when necessary. SDCP utilizes hedging strategies, netting arrangements, and liquidity monitoring to address market risks. Internal controls and compliance mechanisms are in place to manage operational and regulatory risks, ensuring adherence to legal and market regulations. Risk monitoring and oversight are continuously performed through frequent reporting, with critical risks communicated promptly to stakeholders. This integrated approach enables SDCP to maintain a balanced risk profile while adapting to evolving market conditions.



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Finance and Risk Management Committee

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Recommend Board Approval of Amendment to the Revolving Credit Agreement with JP Morgan to Increase the Credit Facility from \$150,000,000 to \$250,000,000

Date: October 17, 2024

RECOMMENDATION

Recommend SDCP Board of Directors approval to authorize the Chief Financial Officer or Chief Executive Officer to execute an amendment to the revolving credit agreement and related documents necessary to implement an increase to the existing line of credit from \$150,000,000 to \$250,000,000 from a JP Morgan credit facility.

BACKGROUND

On December 3, 2019, the SDCP Board of Directors (Board) directed staff to finalize negotiations with River City Bank for a credit facility and banking services for SDCP's start-up, operational financing and banking needs. A request for proposals (RFP) was issued with the determination that a credit facility of up to \$35 million was sufficient. Subsequently, the Board authorized SDCP on March 24, 2022, to execute an amended credit agreement and related documents necessary to implement its current \$50 million credit facility with River City Bank. The funds made available pursuant to the River City Bank credit facility are used primarily for working capital, collateral postings for short and long-term power purchases required to meet ongoing power procurement needs. Subsequently, on February 17, 2023, JP Morgan approved a proposal providing a multi-use Revolving Line of Credit for up to five years for the full amount requested of \$150 million in response to the RFP issued by SDCP.

Further, with SDCP completion of the enrollment period and significant increases in energy costs incurred in 2023, SDCP's current projections from its Pro Forma suggest the need to increase SDCP's line of credit to maintain a prudent financial position.

Therefore, on October 6, 2022, SDCP entered into a professional service agreement with PFM Financial Advisors (PFM) to assist SDCP with the development of its financial planning effort and to prepare an executable work plan for obtaining a rating/credit plan which includes identifying additional credit facilities to increase liquidity and manage

financial risk. The agreement included a not to exceed amount of \$25,000 and was executed under section 5a of SDCP's Procurement Policy and section 1a of its Delegated Contract Authority Policy.

Subsequently, on October 21, 2022, PFM issued an RFP on behalf of SDCP for a line of credit to (i) provide/replace standby letters of credit to secure power purchase agreements and to cover California Public Utilities Commission (CPUC) requirements related and (ii) provide working capital and support longer-term operations, including SDCP's planned expansion in 2024.

Shortly thereafter, on January 23, 2023, the Board approved a new credit agreement to implement a new line of credit of \$150,000,000 from a JP Morgan Credit Facility. As a condition of the JP Morgan proposal, the existing River City Bank line of credit of \$50 million was closed contingent on the approval of the JP Morgan line of credit.

ANALYSIS AND DISCUSSION

Staff recommend increasing the amount of the funding commitment in the Credit Agreement from \$150,000,000 to \$250,000,000 to provide additional flexibility for working capital and credit support in connection with energy procurement, together with certain technical changes in the terms and conditions of the Credit Agreement, as reflected in the First Amendment to Revolving Credit Agreement to be dated on or about October 30, 2024, between SDCP and JPMorgan (together with Annex A in the attachments).

In each of the last two fiscal years, Community Power's energy costs increased substantially during the fiscal year. For example, on February 22, 2024, the Board approved a mid-year budget amendment that included an increase to energy costs by 7.6% from \$948.5 million to \$1,020.8 million, or a \$72.3 million increase. Additionally and similarly, the year prior, on February 23, 2023, the Board approved a mid-year budget amendment that included an increase to energy costs by 11.7% from \$661.6 million to \$738.8 million, or a \$77.2 million increase. The proposed \$100,000,000 increase in the Credit Agreement would therefore provide sufficient working capital to mitigate significant fluctuations in energy costs.

The \$100 million increase to the existing \$150 million credit facility provides SDCP with additional resources to respond fiscally to costs that the agency could incur from further unexpected rises in the power supply costs and to support reserves, if necessary, ensuring SDCP operations will not be jeopardized.

Full terms and conditions are provided in the attached first amendment to the revolving credit agreement which is substantially complete, but still subject to further negotiations between the lenders, the Chief Financial Officer and General Counsel. The other key changes are summarized below.

Key changes to the JP Morgan agreement:

1. SDCP desires to increase the amount of the funding commitment in the Credit Agreement from \$150,000,000 to \$250,000,000 to provide additional flexibility for working capital and credit support.
2. JP Morgan has agreed to a reduction in the LC Facility Fee (as defined in the Credit Agreement) from 1.10% to 1.05%, resulting in a .05% decrease in fee costs if approved in connection with the amendment to the Credit Agreement, as reflected in the Amended and Restated Fee Agreement to be dated on or about October 30, 2024, between SDCP and JP Morgan.

Staff recommends approval to execute the necessary documents to obtain SDCP's credit facility with JP Morgan for \$250 million at a reduced LC Facility Fee from the original agreement.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Resolution No. 2024-09 of the Board of Directors of San Diego

Community Power Adopting First Amendment to the Credit Agreement

Attachment B: First Amendment to Revolving Credit Agreement

Attachment C: Amended and Restated Fee Agreement

Attachment D: Amended and Restated Note

Attachment E: Certificate of Borrower

Attachment F: Annex A to First Amendment to Revolving Credit Agreement

ITEM 5

ATTACHMENT A

RESOLUTION NUMBER 2024-09

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
ADOPTING FIRST AMENDMENT TO CREDIT AGREEMENT**

WHEREAS, San Diego Community Power is a California joint powers authority formed to operate a Community Choice Aggregation Plan for its members (“SDCP”); and

WHEREAS, SDCP has an existing revolving credit facility with J.P. Morgan Chase Bank, N.A. (“JPMorgan”), in the amount of up to \$150,000,000 for working capital and credit support for the purchase of energy, the terms of which are set forth in that certain Credit Agreement dated February 17, 2023, between SDCP and JPMorgan (together with all schedules and exhibits thereto, the “Credit Agreement”); and

WHEREAS, SDCP desires to increase the amount of the funding commitment in the Credit Agreement to \$250,000,000 to provide additional flexibility for working capital and credit support in connection with energy procurement, together with certain technical changes in the terms and conditions of the Credit Agreement, as reflected in that certain First Amendment to Revolving Credit Agreement to be dated on or about October 30, 2024, between SDCP and JPMorgan (together with Annex A attached thereto, the “First Amendment”); and

WHEREAS, JPMorgan has agreed to a reduction in the LC Facility Fee (as defined in the Credit Agreement) in connection with the amendment to the Credit Agreement, as reflected in that certain Amended and Restated Fee Agreement to be dated on or about October 30, 2024, between SDCP and JPMorgan (the “A&R Fee Agreement”); and

WHEREAS, staff and legal counsel for SDCP have finalized negotiation of the First Amendment and the A&R Fee Agreement and the same are presented to the Board of Directors for review and approval.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of SDCP (the “Board of Directors”) as follows:

1. The Board of Directors has determined that the recitals herein are true and correct; and
2. The Board of Directors hereby approves the First Amendment and the A&R Fee Agreement and authorizes the Chief Financial Officer, or his designee, to (i) finalize the terms of the First Amendment and the A&R Fee Agreement substantially in the form attached to the staff report with the advice of legal counsel and complete the negotiation of any ancillary documents or agreements in connection therewith, including but not limited to that certain Amended and Restated Note to be dated on or about October 30, 2024, by SDCP in favor of JPMorgan (the “A&R Note”) (together with the Credit Agreement, the First Amendment and the A&R Fee Agreement, as each are approved by legal counsel as to form, the “Transaction Documents”); and (ii) to execute and deliver, and perform the obligations under, the Transaction Documents, including but not limited

to borrowing thereunder from time to time and the continuing grant of the first priority security interest in net revenues of SDCP; and

3. The Board of Directors ratifies and affirms the continuation of the grant of the first priority pledge of and security interest in the net revenues of SDCP as described in the First Amendment to continue to secure the obligations of SDCP to JPMorgan under the Credit Agreement and the other Transaction Documents, subject only to the rights of certain of SDCP's power providers who are beneficiaries of the existing lockbox security arrangements; and
4. The Board of Directors authorizes the Chief Executive Officer and the Chief Financial Officer, acting alone or in combination with one another, to take such additional action as is necessary or appropriate to carry out the obligations of SDCP under the First Amendment to Revolving Credit Agreement, the Amended and Restated Fee Agreement and the exhibits thereto; and
5. This Resolution shall be effective immediately after its adoption by the Board of Directors.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power on October [], 2024

Joe LaCava, Chairman of the Board

Approved as to form:

Vera Tyagi, Legal Counsel
San Diego Community Power

Attest:

Maricela Hernandez, Secretary to the Board of Directors
Clerk of the Board
San Diego Community Power

ITEM 5

ATTACHMENT B

FIRST AMENDMENT TO REVOLVING CREDIT AGREEMENT

This FIRST AMENDMENT TO REVOLVING CREDIT AGREEMENT (this “*Amendment*”) dated as of [____], 2024 (the “*Amendment Effective Date*”), is by and between SAN DIEGO COMMUNITY POWER, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*SDCP*”), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “*Lender*”). All capitalized terms herein and not defined herein shall have the respective meanings set forth in the hereinafter defined Agreement.

W I T N E S S E T H

WHEREAS, SDCP and the Lender have entered into that certain Revolving Credit Agreement dated as of February 17, 2023 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “*Agreement*”), relating to the advance of revolving loans and the issuance of letters of credit by the Lender;

WHEREAS, SDCP has requested that the Lender agree to increase the Commitment from \$150,000,000 to \$250,000,000 (the “*Revolving Increase*”) and amend certain other provisions of the Agreement, and the Lender is willing to provide the Revolving Increase and amend such other provisions pursuant to the terms and conditions provided for herein;

WHEREAS, pursuant to Section 9.04 of the Agreement, the Agreement may be amended by a written amendment thereto executed by the Lender and SDCP;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENTS.

Subject to the satisfaction or waiver of the conditions precedent set forth in Section 2 below, the Agreement shall be and hereby is amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in the pages of the amended Agreement attached hereto as Annex A.

2. CONDITIONS PRECEDENT.

This Amendment shall become effective on the Amendment Effective Date, subject to the satisfaction of or waiver by the Lender of all of the following conditions precedent:

2.01. Delivery by SDCP and the Lender of an executed counterpart of (i) this Amendment, (ii) the Amended and Restated Revolving Note and (iii) that certain Amended and Restated Fee Agreement dated as of the First Amendment Effective Date.

2.02. Delivery by SDCP to the Lender of (i) the authorizing resolution of the Borrower approving the Revolving Increase and the execution and delivery of this Amendment and performance of its obligations hereunder, (ii) opinion of Best Best Kreiger LLP, counsel to the Borrower, dated the Amendment Effective Date and addressed to the Lender in the form satisfactory to the Lender and its counsel and (iii) a customary certificate executed by the appropriate officers of the Borrower including the incumbency and signature of the officer of the Borrower executing this Amendment.

2.03. Unless waived by the Lender, the Borrower shall have paid all fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) to the extent invoiced at least one Business Day (or such shorter time as the Borrower may agree) prior to or on the Amendment Effective Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Lender).

2.04. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to the Lender and its counsel.

3. REPRESENTATIONS AND WARRANTIES

3.01. Borrower represents and warrants to the Lender as follows:

(a) the undersigned (i) is, on and as of the Amendment Effective Date, the duly appointed, qualified and acting Chief Financial Officer of SDCP and (ii) has been and is duly authorized to execute and deliver, in the name of, for and on behalf of SDCP, this Amendment;

(b) the representations and warranties of SDCP contained in the Agreement and each of the Basic Documents (i) that are not qualified by concepts of materiality, are true and correct in all material respects on and as of the Amendment Effective Date with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality, are true and correct on and as of the Amendment Effective Date with the same force and effect as if made on and as of such date, in each case, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date; and

(c) no Potential Event of Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

3.02. In addition to the representations given in the Agreement, the Borrower hereby ratifies and affirms that, both before and after giving effect to this Amendment:

(a) the Net Revenues are pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the

Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against the Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in the Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues made in the Agreement shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of the Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues. Except for the Lien on Net Revenues that secures the Obligations, there is no pledge of or Lien on Net Revenues.

4. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Agreement. THIS AMENDMENT AND THE AGREEMENT, AS AMENDED HEREBY, SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF THE LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS. Section 9.08 of the Agreement is incorporated herein by reference.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract; *provided* that such execution shall be in accordance with Section 9.07 of the Agreement, which Section 9.07 is incorporated herein by reference.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Effective Date.

SAN DIEGO COMMUNITY POWER

By: _____

Name: Eric W. Washington

Title: Chief Financial Officer

JPMORGAN CHASE BANK, N.A.

By: _____

Name: Allyson Goetschius

Title: Executive Director

Annex A

Amended Revolving Credit Agreement

[Please see attached.]

ITEM 5

ATTACHMENT C

AMENDED AND RESTATED FEE AGREEMENT

This AMENDED AND RESTATED FEE AGREEMENT dated [____], 2024 (as amended, restated, supplemented or otherwise modified from time to time, this “*Fee Agreement*”), is by and between SAN DIEGO COMMUNITY POWER, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (the “*Borrower*”) and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “*Lender*”). This Fee Agreement amends, restates and supersedes in its entirety, as of the date hereof, that certain Fee Agreement dated February 17, 2023 (the “*Original Fee Agreement*”), between the Borrower and the Lender, and such Original Fee Agreement shall be of no further force and effect.

Reference is made to the Revolving Credit Agreement, dated as of February 17, 2023 (as amended by the First Amendment to Revolving Credit Agreement dated as of the date hereof, and as may be further amended, restated, supplemented or otherwise modified from time to time, the “*Agreement*”), entered into between the Borrower and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

Article I FEES.

Section 1.1 Undrawn Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the Effective Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), commencing on April 3, 2023 and in arrears on the first Business Day of each July, October, January and April occurring thereafter to the Commitment End Date, and on the Commitment End Date, a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) the rate per annum associated with the Total Commitment Utilization (as defined below) as specified in the applicable Level in the pricing matrix below under the column captioned “Undrawn Fee Rate” (the “*Undrawn Fee Rate*”) and in effect on such day, (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360; *provided, that,*

upon the occurrence, and at all times during the continuation, of an Event of Default, the Undrawn Fee Rate shall be equal to the Default Rate.

<u>LEVEL</u>	<u>TOTAL COMMITMENT UTILIZATION</u>	<u>UNDRAWN FEE RATE</u>	<u>APPLICABLE RATE</u>	
			<u>TERM BENCHMARK/ RFR BORROWING</u>	<u>ABR BORROWING</u>
Level 1:	≥ 25%	0.620%	1.525%	0.525%
Level 2:	< 25%	0.650%	1.600%	0.600%

The term “*Total Commitment Utilization*” as used in this Fee Agreement means, for any day, the product of (x) the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day and (y) the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The term “*Unutilized Commitment*” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The term “*Applicable Rate*” as used in the Agreement and this Fee Agreement means, for any Interest Period, the rate per annum associated with the Total Commitment Utilization in effect for each day during each such Interest Period as specified in the applicable Level in the pricing matrix set forth in Section 1.1 above under the column captioned “Applicable Rate” with respect to an ABR Borrowing or a Term Benchmark Borrowing or, if a Term Benchmark Borrowing is not available under the Agreement, a RFR Borrowing, as applicable.

Section 1.2 Letter of Credit Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), (i) in arrears on the first Business Day of each July, October, January and April occurring from April 3, 2023 and thereafter to the First Amendment Effective Date, and on the First Amendment Effective Date, a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period (or partial period) to the product of (x) 1.10% per annum (the “*Original LC Facility Fee Rate*”), (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360 and (ii) commencing on [[October 1, 2024] / [January 1, 2025]]¹ and in arrears on the first Business Day of each July, October, January and April occurring from the First Amendment Effective Date and thereafter to the LC Termination Date, and on the LC Termination Date, a LC Facility Fee in an amount equal for each day during such calculation period (or partial period) to the product of (x) 1.05% per annum (the “*Amended LC Facility Fee Rate*” and, together with the Original LC Facility Fee Rate, the “*LC Facility Fee Rate*”), (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360; *provided, that*, upon the

¹ NTD: To be the first Business Day following the first quarter ending after the First Amendment Effective Date.

occurrence, and at all times during the continuation, of an Event of Default, the LC Facility Fee Rate shall be equal to the Default Rate.

Section 1.3 Amendment, Waiver or Consent Fees. The Borrower agrees to pay to the Lender on the date on which the Borrower requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$3,000, plus, in each case, the reasonable fees and expenses of legal counsel to the Lender.

Section 1.4 Termination Fee; Reduction Fee.

(a) The Borrower hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the Borrower prior to the date that is two (2) years after the Effective Date (such date, the “*Permitted Termination Date*”), in an amount equal to the product of (1) the Undrawn Fee Rate specified in Level 2, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or Reimbursement Obligations) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Permitted Termination Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination. No termination in full of the Commitment shall become effective unless and until all amounts payable by the Borrower to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.4(a)) have been paid in full in immediately available funds.

(b) The Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Effective Date prior to the Permitted Termination Date, without the payment by the Borrower to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate specified in Level 2, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such permanent reduction to the Permitted Termination Date, and the denominator of which is 360. Under no circumstances shall the Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the Borrower reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.5 Default Rate. For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, (i) with respect to any Loans, the then applicable Adjusted Term SOFR Rate, Alternate Base Rate or, to the extent that the Term SOFR Rate is not available under the Agreement, Adjusted Daily Simple SOFR plus the Applicable Rate plus three percent (3%), (ii) with respect to any Letter of Credit, the LC Facility Fee Rate plus three percent (3%) and (iii) with respect to the Unutilized Commitment, the then applicable Undrawn Fee Rate plus one percent (1%).

Article II MISCELLANEOUS.

Section 2.1 Legal Fees. The Borrower shall pay the reasonable legal fees and expenses of the Lender incurred in connection with the initial preparation and negotiation of the First Amendment, this Fee Agreement and certain other Basic Documents in an amount equal to \$[]² plus disbursements.

Section 2.2 Amendments. No amendment to this Fee Agreement will become effective without the prior consent of the Borrower and the Lender, which consent must be in writing and signed by the Lender and an Authorized Officer of the Borrower.

Section 2.3 Governing Law. This Fee Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without giving effect to conflicts of laws provisions (other than New York general obligations laws 5-1401 and 5-1402); *provided, that*, the obligations of the Borrower hereunder shall be governed by the laws of the State of California without regard to choice of law rules.

Section 2.4 Counterparts. This Fee Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Fee Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

Section 2.5 Severability. If any provision of this Fee Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Fee Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[SIGNATURE PAGES TO FOLLOW]

² NTD: TBD.

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

ITEM 5

ATTACHMENT D

AMENDED AND RESTATED NOTE

Not to exceed \$250,000,000

Dated Date: October [], 2024

FOR VALUE RECEIVED, the undersigned SAN DIEGO COMMUNITY POWER (the “Borrower”), hereby promises to pay to JPMORGAN CHASE BANK, N.A., or its registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of all Reimbursement Obligations related to Letters of Credit and each Loan from time to time made by the Lender to the Borrower, in each case under that certain Revolving Credit Agreement, dated as of February 17, 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”), between the Borrower and the Lender, in accordance with the terms of the Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Loan and Reimbursement Obligations from the date of such Loan or Honor Date, as applicable, until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Lender in Dollars in immediately available funds at the Lender’s Lending Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Amended and Restated Note (this “Note”) referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

This Note is an obligation of the Borrower payable from and secured by a pledge of and a senior lien and charge upon Net Revenues. This Note is payable as to principal and interest thereof, exclusively from Net Revenues. This Note and the interest hereon are senior to all other debt incurred and payable from Net Revenues.

The Loans made by the Lender and Reimbursement Obligations shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and Reimbursement Obligations and payments with respect thereto.

The Lender, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

Delivery of an executed counterpart of a signature page of this Note by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Note.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles

of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Resolution duly adopted by the Borrower. The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

This Note is issued in substitution and replacement of, but not a novation of, and evidences all of the indebtedness previously evidenced by that certain Note, dated as of February 17, 2023, made by the undersigned in favor of the Bank in the principal amount not to exceed \$150,000,000.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the Dated Date specified above.

SAN DIEGO COMMUNITY POWER

By: _____
Name: Eric W. Washington
Title: Chief Financial Officer

LOANS AND PAYMENTS WITH RESPECT THERETO

DATE	AMOUNT OF LOAN MADE	AMOUNT OF PRINCIPAL OR INTEREST PAID THIS DATE	OUTSTANDING PRINCIPAL BALANCE THIS DATE	NOTATION MADE BY
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ITEM 5

ATTACHMENT E

SAN DIEGO COMMUNITY POWER

CERTIFICATE OF BORROWER

October __, 2024

I, Eric Washington, Chief Financial Officer of San Diego Community Power, a California joint powers authority ("Borrower"), hereby certify the following:

A. Authorizing Resolution

Attached hereto as Attachment A is a true, complete and correct copy of Resolution 2024-[__], which was adopted by the Board of Directors of Borrower at a duly noticed and properly held meeting on October __, 2024 ("Resolution"), authorizing the execution and delivery of, and performance under, the First Amendment to Revolving Credit Agreement dated as of even date herewith ("First Amendment"), with JP Morgan Chase Bank, N.A., as lender ("JPMorgan"), which amends that certain Revolving Credit Agreement dated as of February 17, 2023 with JPMorgan (as amended by the First Amendment and as may be further amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), the Amended and Restated Fee Agreement dated as of even date herewith, with JPMorgan (the "Fee Agreement"), Amended and Restated Note dated as of even date herewith, in favor of JPMorgan (the "Note") and authorizing the Chief Financial Officer to execute the First Amendment, the Fee Agreement, the Note and all ancillary and collateral documents in connection therewith (collectively, the "Revised Loan Documents"). The Resolution has not been amended, restated, modified, supplemented, rescinded or repealed and remains in full force and effect as of the date of this Certificate.

B. Certifications

The representations and warranties of Borrower set forth in Section IV of the Credit Agreement are true and correct as of the date of this Certificate and no Potential Event of Default or Event of Default (as defined in the Credit Agreement) has occurred and is continuing.

All conditions precedent in Section 2 of the First Amendment have been satisfied.

C. Authorized Persons

The below named person is duly appointed, and has been duly qualified as, the Chief Financial Officer of the Borrower, and the signature below set opposite his name is his genuine signature:

Name

Signature

Eric Washington

The foregoing individual is authorized to sign the Revised Loan Documents, each Borrowing Request and Letter of Credit Request (each as defined in the Credit Agreement) and such other notices and documents as are necessary for Borrower to request loans and letters of credit and carry out its obligations under the Credit Agreement, the Revised Loan Documents and any other Loan Documents (as defined in the Credit Agreement).

IN WITNESS WHEREOF, I have signed this certificate as of October __, 2024.

Karin Burns
Chief Executive Officer
San Diego Community Power

ATTACHMENT A
AUTHORIZING RESOLUTION

ITEM 5

ATTACHMENT F

[ANNEX A TO FIRST AMENDMENT TO REVOLVING CREDIT AGREEMENT]

REVOLVING CREDIT AGREEMENT¹

dated as of February 17, 2023

between

SAN DIEGO COMMUNITY POWER,
as the Borrower

and

JPMORGAN CHASE BANK, N.A.,
as the Lender

¹ Conformed through the First Amendment to Revolving Credit Agreement dated [____], 2024.

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REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”) is entered into as of February 17, 2023, between SAN DIEGO COMMUNITY POWER, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (the “*Borrower*” or “*SDCP*”), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “*Lender*”).

PRELIMINARY STATEMENTS

WHEREAS, the Borrower wishes to obtain credit from the Lender hereunder and the Lender is willing, upon the terms and subject to the conditions set forth in this Agreement, to provide such credit to the Borrower; and

WHEREAS, all obligations of the Borrower to repay the Lender for Credit Extensions (as defined herein) made by the Lender under the Commitment (as defined herein), and interest thereon, are created under and will be evidenced by this Agreement, the Fee Agreement (as defined herein) and the Note (as defined herein), and will be secured by a pledge of and lien on Net Revenues (as defined herein).

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the Lender to extend to the Borrower the Commitment, the Borrower and the Lender hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms, as used herein, have the following meanings:

“*Account Control Agreement*” means the Account Control Agreement, dated as of March 1, 2021, as amended and supplemented in accordance with the terms hereof, by and among (i) RCB, (ii) SDGP and (iii) RCB, in its capacity as collateral agent.

“*ABR*”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq.

“*Adjusted Daily Simple SOFR*” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if Adjusted Daily Simple SOFR as so determined

would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, *plus* (b) 0.10%; *provided that* if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Affiliate” means as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus $\frac{1}{2}$ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided that* for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1%, such rate shall be deemed to be 1% for purposes of this Agreement.

“Annual Debt Service” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (A) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, the Letters of Credit, other Parity Debt and Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period, and (B) the sum of the (i) quotient obtained by dividing the average daily outstanding principal balance of the Loans, Parity Debt (other than the Borrower’s payment Obligations under this Agreement), and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5 and (ii) quotient obtained by dividing the average daily amounts available to be drawn under outstanding Letters of Credit during such Fiscal Year or other designated four fiscal quarter period by 10.

“Applicable Rate” has the meaning set forth in the Fee Agreement.

“Agreement” has the meaning set forth in the introductory paragraph hereof.

“Anti-Terrorism Laws” has the meaning set forth in Section 4.17 hereof

“Authorized Officer” means the Chief Financial Officer, and any other individual designated from time to time in a certificate executed by the Borrower and delivered to the Lender.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to subclause (e)(i) of Section 2.14.

“Basic Documents” means this Agreement, the Fee Agreement, the Note, the Lockbox Security Documents and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder. For the avoidance of doubt, PPAs are not Basic Documents.

“Benchmark” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; *provided* that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to subclause (e)(i) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

- (1) the Adjusted Daily Simple SOFR; or
- (2) the sum of: (a) the alternate benchmark rate that has been selected by the Lender and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or component thereof) have been determined and announced by the regulatory

supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if such Benchmark (or component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such

component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.14.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making of a Loan by the Lender to the Borrower pursuant to Section 2.01 hereof.

“*Borrowing Request*” means a notice in writing of a Borrowing pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit B attached hereto, or such other form as may be approved by the Lender (including any form on an electronic platform or electronic transmission system as shall be approved by the Lender), appropriately completed and signed by an Authorized Officer.

“*Borrowing Date*” has the meaning set forth in Section 2.02 hereof.

“*Business Day*” means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or San Diego, California; provided that, in addition to the foregoing, a Business Day shall be any such day that is only a U.S. Government Securities Business Day (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate.

“*CAISO*” means the California Independent System Operator.

“*Cash and Cash Equivalents*” means, as of any date of determination, the cash on hand of the Borrower derived from Revenues, demand deposits of Revenues, and any of the following short-term investments purchased with proceeds of Revenues, in each case as of such date and

which are not legally restricted: (a) readily marketable obligations issued or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof having maturities of not more than three hundred sixty (360) days from the date of acquisition thereof; *provided* that the full faith and credit of the United States of America is pledged in support thereof; (b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than ninety (90) days from the date of acquisition thereof; (c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than ninety (90) days from the date of acquisition thereof and (d) investments, classified in accordance with GAAP as current assets of the Borrower in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

"Cash Collateral Loan" means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower's payment obligations under one or more PPAs.

"Change in Law" means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (the "Basel Committee"), or any successor or similar authority, or the United States or foreign regulatory authorities, in each case pursuant to the regulatory standards established by the Basel Committee with respect to bank capital adequacy, stress testing and market liquidity risk and commonly referred to as "Basel III," shall in each case be deemed to be a *"Change in Law"*, regardless of the date enacted, adopted or issued.

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the Lender’s obligation to make Loans to the Borrower pursuant to Section 2.01 and issue Letters of Credit for the account of the Borrower pursuant to Section 2.03, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.05(a) hereof. Immediately prior to the First Amendment Effective Date, the amount of the Commitment was \$150,000,000, and from and after the First Amendment Effective Date, the amount of the Commitment is \$250,000,000.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or reimbursable to the Borrower relating to the authorization, execution and delivery of this Agreement, the Note and the Letters of Credit, including fees, charges, disbursements and expenses of attorneys, municipal advisors, accounting firms, consultants and other professionals, and fees and charges for the preparation, execution and delivery of this Agreement, the Note and the Letters of Credit.

“*Covered Entity*” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Covered Party*” has the meaning assigned to it in Section 9.16.

“*CPUC*” means the California Public Utilities Commission.

“*Credit Extension*” means each of the following: (a) a Borrowing and (b) an LC Credit Extension.

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal SOFR for the day (such day “*SOFR Determination Date*”) that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding

such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website.

"Days Liquidity on Hand" means, as of any date of determination, the quotient, in number of days, obtained by dividing (i) sum of the Cash and Cash Equivalents and the Revolving Credit Availability on such date of determination by (ii) the product of (A) the sum of Operation and Maintenance Expenses and Interest Expense for the four consecutive fiscal quarter period ended on or immediately prior to such date of determination and (B) 1/365.

"Debt" of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business and not more than ninety (90) days past due, (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons and (g) the net obligations of such Person under any Swap Contract. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Debt Service Coverage Ratio" means, determined as of the last day of any fiscal quarter of the Borrower, the ratio obtained by dividing (i) Net Revenues by (ii) the Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

"Debt Service Coverage Ratio Notice" has the meaning set forth in Section 5.11(a).

"Default Rate" has the meaning set forth in the Fee Agreement.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Direction Letter" has the meaning set forth in the Security Agreement.

“Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as enacted by the United States Congress, and signed into law on July 21, 2010, and all statutes, rules, guidelines or directives promulgated thereunder.

“Dollar” and *“\$”* mean lawful money of the United States.

“Effective Date” means February 17, 2023, subject to the satisfaction or waiver by the Lender of the conditions precedent set forth in Section 3.01 hereof.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” has the meaning set forth in Section 7.01 of this Agreement.

“Excluded Taxes” means, with respect to the Lender, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“Executive Order” has the meaning set forth in Section 4.17 hereof

“Existing Maturity Date” has the meaning set forth in Section 2.05(b)(i) hereof.

“Existing RCB Assignment of Deposit Account” means that certain Assignment of Deposit Account with respect to Deposit Account No. 7877580771, dated as of February 1, 2023, by and between SDCP, as grantor, and RCB, as lender, entered into in connection with the Existing RCB Promissory Note and granting a security interest in favor of RCB over such deposit account and the funds therein from time to time and terminating no later than the the maturity date therein, December 7, 2023.

“Existing RCB Letter of Credit” means that certain Irrevocable Standby Letter of Credit No. SLCPPDX08115 issued on behalf of RCB, as applicant, by U.S. Bank, N.A., as issuing bank, in the amount of \$147,000.00, for the benefit of San Diego Gas & Electric Company, as beneficiary, at the request of SDCP and expiring on the expiry date therein, December 7, 2023.

“Existing RCB Promissory Note” means that certain Promissory Note evidencing Loan No. 5084549976-101 in the principal amount of \$147,000.00, dated as of February 1, 2023, by and between RCB, as lender, and SDCP, as borrower, issued in connection with the Existing RCB Letter of Credit and terminating no later than the the maturity date therein, December 7, 2023.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*Fee Agreement*” means that certain Amended and Restated Fee Agreement, dated as of the First Amendment Effective Date, between the Borrower and the Lender, as supplemented, amended, restated or otherwise modified from time to time in accordance with the terms hereof.

“*Final Letter of Credit Expiration Date*” means the earlier of (i) the date on which the Lender declares its obligation to make Credit Extensions terminated under Section 7.02 hereof and (ii) the day that is thirty (30) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“*First Amendment*” means that certain First Amendment to Revolving Credit Agreement dated as of [____], 2024, between the Lender and the Borrower.

“*First Amendment Effective Date*” means [____], 2024, being the “Amendment Effective Date” under and as defined in the First Amendment.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of the Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR shall be zero.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“Generation Rates” has the meaning set forth in Section 5.01(j)(i) hereof.

“Governmental Authority” means the government of the United States of America or any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the *“primary obligor”*) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term *“Guarantee”* as a verb has a corresponding meaning.

“Honor Date” has the meaning set forth in Section 2.03(d) hereof.

“Indemnified Costs” has the meaning set forth in Section 9.03(b) hereof.

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of March 1, 2021, as amended and supplemented in accordance with the terms hereof, by and among (i) RCB, in its capacity as collateral agent, (ii) each of the creditors from time-to-time signatory thereto that are party to a PPA, and (iii) SDCP.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing (other than an ABR Borrowing of a Reimbursement Loan) in accordance with Section 2.13, in a form approved by the Lender and signed by the Borrower.

“Interest Expense” means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under capitalized leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower with respect to the Borrower for such period.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, (b) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date and (c) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Maturity Date.

“Interest Period” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the applicable Benchmark), as the Borrower may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investment Policy” means the investment guidelines of the Borrower, as the same may be adopted by the Borrower and amended from time to time in accordance with State laws.

“ISP” means, with respect to any Letter of Credit, means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by the Lender on the date such Letter of Credit is issued.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. Seq.)

“Joint Powers Agreement” means the Amended and Restated Joint Powers Agreement of the Borrower effective as of December 16, 2021, and as amended, restated, supplemented or otherwise modified from time to time.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Lending Office” means the office of the Lender to which notices of Borrowings hereunder shall be given by the Borrower and to which payments of amounts due hereunder shall be made, which is set forth in Section 9.01 hereof.

“LC Collateral Account” has the meaning set forth in Section 2.15(a) hereof.

“LC Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“LC Document” means with respect to any Letter of Credit, the Letter of Credit Request, and any other document, agreement and instrument entered into by the Lender and/or the Borrower relating to such Letter of Credit.

“LC Exposure” means, as at any date of determination, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit, plus (b) the aggregate of all Reimbursement Obligations.

“LC Facility Fee” has the meaning set forth in the Fee Agreement.

“Letter of Credit” means any standby letter of credit issued hereunder.

“Letter of Credit Expiration Date” means, with respect to any Letter of Credit, the stated expiration date thereof.

“Letter of Credit Request” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Lender.

“Liquidity Cure Right” has the meaning set forth in Section 5.11(a) hereof.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever

(including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means, individually or collectively, as applicable, the loans extended pursuant to Section 2.01 hereof and all Reimbursement Loans.

“Lockbox Security Document(s)” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“Material Adverse Change” means any material or adverse change in the operations, assets, liability or financial condition of the Borrower which could reasonably be expected to materially adversely impair the Borrower’s ability to pay its Obligations under this Agreement.

“Material Adverse Effect” means: (a) a material adverse effect on the operations, assets, liability or financial condition of the Borrower; (b) a material impairment of the rights and remedies or security or interests of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement or any other Basic Document to which it is a party, (c) a material adverse effect upon the legality, validity, binding effect or enforceability of the Borrower’s obligations under this Agreement, any other Basic Document to which the Borrower is a party, or (d) a material adverse effect on the rights, interests, security or remedies of the Lender with respect to this Agreement or any other Basic Document or the Joint Powers Agreement.

“Maturity Date” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on February 17, 2028, or such later date to which the Maturity Date may be extended pursuant to Section 2.05(b) hereof and, if any such date is not a Business Day, the next preceding Business Day.

“Maximum Interest Rate” means the maximum rate of interest on the relevant obligation permitted by applicable law, if any.

“Member” or *“Members”* means, individually or collectively, as applicable, (i) the City of Chula Vista, California (ii) the City of Encinitas, California, (iii) the City of Imperial Beach, California, (iv) the City of La Mesa, California, (v) the City of San Diego, California and (vi) the City of National City, California.

“Minimum Collateral Amount” has the meaning set forth in Section 2.15(a) hereof.

“Moody’s” means Moody’s Investors Service and its successors and assigns.

“Net Revenues” means, for any period the same is to be determined, the Revenues for such period less all Operation and Maintenance Expenses during such period. Amounts distributed from the Lockbox Account (as defined in the Security Agreement) to the parties entitled to such

distributions in accordance with the Security Agreement (not including distributions to the Borrower) are included in Operation and Maintenance Expenses and are not Net Revenues.

“*Note*” means that certain Note dated the Effective Date of the Borrower, in favor of the Lender, evidencing the outstanding Loans made by and any Reimbursement Obligations owing to the Lender and substantially in the form of *Exhibit A* hereto.

“*Notice of Loan Prepayment*” means a notice of prepayment with respect to a Loan which shall be substantially in the form of *Exhibit C*, or such other form as may be approved by the Lender (including any form on an electronic platform or electronic transmission system as shall be approved by the Lender), appropriately completed and signed by an Authorized Officer.

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB’s Website*” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Obligations*” means the obligations of the Borrower under this Agreement to repay (i) all Loans, all LC Exposure, all amounts due under the Fee Agreement (including, but not limited to, all amounts due with respect to the Undrawn Fee and the LC Facility Fee) and the Note, together with interest thereon, pursuant to and in accordance with this Agreement and the Note, (ii) all fees, and (iii) all expenses and charges payable or reimbursable hereunder to the Lender (including, without limitation, any amounts to reimburse the Lender for any advances or expenditures by it under any of such documents) and all other payment obligations of the Borrower to the Lender arising under or in relation to this Agreement or the other Basic Documents, in each, case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

“*OFAC*” means the United States Department of Treasury Office of Foreign Assets Control.

“*Operation and Maintenance Expenses*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and means the reasonable and necessary costs paid or incurred by the Borrower for maintaining and operating the System, including, without duplication, costs of electric energy and power purchased, costs of transmission, costs of fuel supply, the cost to purchase Regulatory Compliance Products, the cost of preparing and filing regulatory plans, reports, and including all reasonable expenses of management and repair and

other expenses necessary to maintain and preserve the System in good repair and working order. For the avoidance of doubt, “Operation and Maintenance Expenses” shall include all amounts required to be paid by the Borrower under contracts for the purchase of Products.

“*Other Credit Agreement*” means any credit agreement, bank agreement, covenant agreement, purchase agreement, loan agreement or reimbursement agreement to which the Borrower is or may hereafter become a party (other than this Agreement) that is secured by or payable from Revenues or Net Revenues, with a notional or principal amount or amounts, as applicable, in the aggregate, of \$2,000,000 or more concurrently outstanding.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“*Overnight Bank Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“*Parity Debt*” means any System Debt issued or incurred by the Borrower (i) the payment of which is on parity with the Borrower’s payment Obligations under this Agreement and (ii) that is subject to an intercreditor agreement in form and substance satisfactory to the Lender.

“*Participation*” has the same meaning given such term in Section 9.05(d).

“*Participant Register*” has the same meaning given such term in Section 9.06(b).

“*Patriot Act*” has the same meaning given such term in Section 9.14.

“*Person*” means an individual, a corporation, a partnership, an association, a trust, a Governmental Authority or any other entity or organization of whatever nature.

“*Potential Event of Default*” means any condition or event which, with the giving of notice or lapse of time, or both, would, unless cured or waived, become an Event of Default.

“*PPA*” means any agreement for the purchase of Products executed between the Borrower and a PPA Counterparty. A PPA may be for short term or multi-year transactions for the purchase of Products.

“*PPA Counterparty*” means a party to a PPA other than the Borrower, including without limitation, the CAISO.

“*Prime Rate*” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“*Products*” means any of the following: energy, renewable energy attributes, capacity attributes, transmission rights, resource adequacy benefits, or any other similar or related products contemplated in the PPAs.

“*Projected Net Revenues*” means, for any period the same is to be determined, the Projected Revenues for such period less all Projected Operation and Maintenance Expenses during such period.

“*Projected Operation and Maintenance Expenses*” means, for any period the same is to be determined, the Operation and Maintenance Expenses included in the Projections for such period.

“*Projected Revenues*” means, for any period the same is to be determined, the Revenues included in the Projections for such Period.

“*Projections*” has the meaning assigned to such term in Section 3.01(d).

“*Projected*” has a correlative meaning.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*QFC*” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“*QFC Credit Support*” has the meaning assigned to it in Section 9.16.

“*Reduction Amount*” shall have the meaning assigned to such term in Section 2.04(b)(ii).

“*Reduction Fee*” has the meaning set forth in the Fee Agreement.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four (4) U.S. Government Securities Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Lender in its reasonable discretion.

“Register” shall have the meaning assigned to such term in Section 9.06(a).

“Regulation D” means Regulation D of the FRB, as in effect from time to time.

“Regulation U” means Regulation U of the FRB, as in effect from time to time.

“Regulatory Compliance Product” means any Product required to be purchased by the Borrower to satisfy the requirements of the CPUC, the California Energy Commission, the Federal Energy Regulatory Commission, the CAISO or any other Governmental Authority with jurisdiction over the operation of the System.

“Reimbursement Loans” shall have the meaning assigned to such term in Section 2.03(d).

“Reimbursement Obligations” means any and all obligations of the Borrower to reimburse the Lender for draws under Letters of Credit.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, Adjusted Daily Simple SOFR, as applicable.

“Reserve Policy” means the Financial Reserves Policy (F21_001) of the Borrower, adopted by SDCP on June 24, 2021, as amended on February 24, 2022.

“Resolution” means Resolution No. 2023-01, adopted by SDCP on January 23, 2023.

“Revenues” means, for any period, all amounts received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System during such period, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“Revolving Credit Availability” means, as of any date of determination, the Commitment minus the Revolving Credit Exposure.

“Revolving Credit Exposure” means, at any time, the sum of the outstanding principal amount of the Loans and the LC Exposure at such time.

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on Adjusted Daily Simple SOFR.

“RCB” means River City Bank, a California corporation.

“RCB Debt Obligations” means all obligations due and owing to RCB pursuant to the Amended and Restated Credit Agreement dated as of March 24, 2022, between the Borrower and RCB, as amended, restated, supplemented or otherwise modified from time to time.

“S&P” means S&P Global Ratings and its successors and assigns.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Syria, the so-called Donetsk People’s Republic of Ukraine, the so-called Luhansk People’s Republic of Ukraine, and the Russian-controlled Kherson and Zaporizhzhia regions of Ukraine).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. government, including by Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, U.S. Department of Commerce, or by the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b) (including, without limitation for purposes of defining a Sanctioned Person, as ownership and control may be defined and/or established in and/or by any applicable laws, rules, regulations, or orders).

“Sanctions” means all economic or financial sanctions, trade embargoes or similar restrictions imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Security Agreement” means the Security Agreement, dated as of March 1, 2021, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, by and between SDCP and RCB, in its capacity as collateral agent, for the benefit of

each seller of Product under a PPA that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“*SOFR*” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“*SOFR Administrator*” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Determination Date*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*SOFR Rate Day*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*State*” means the State of California.

“*Subordinate Debt*” means any unsecured System Debt payable from, but not secured by pledge of or lien on, Revenues or Net Revenues, the payment of which is subordinate to the payment in full of the Borrower’s payment Obligations under this Agreement and the payment in full of all Parity Debt, pursuant to documentation in form and substance satisfactory to Lender.

“*Supported QFC*” has the meaning assigned to it in Section 9.16.

“*Swap Contract*” means the following transactions of the Borrower which are expressly payable from Revenues or Net Revenues: (a) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement. For the avoidance of doubt, “Swap Contracts” shall not include commodity swaps or commodity options or PPAs.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and

termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of the Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of the Borrower, and (iii) all other facilities, properties and structures of the Borrower, wherever located, reasonably required to carry out any lawful purpose of the Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by the Borrower.

“*System Debt*” means Debt of the Borrower.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, value added tax or any other goods and services, use or sales tax or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term Benchmark*” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“*Term SOFR Determination Day*” has the meaning assigned to it under the definition of Term SOFR Reference Rate.

“*Term SOFR Rate*” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“*Term SOFR Reference Rate*” means, for any day and time (such day, the “*Term SOFR Determination Day*”), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Lender as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “*Term SOFR Reference Rate*” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long

as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“Termination Fee” has the meaning set forth in the Fee Agreement.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Alternate Base Rate or, to the extent that the Term SOFR Rate is not available hereunder, Adjusted Daily Simple SOFR.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

“UCP” means Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by the Lender on the date such Letter of Credit is issued.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Undrawn Fee” has the meaning set forth in the Fee Agreement.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.16.

“United States” and *“U.S.”* mean the United States of America.

“Working Capital Loans” has the meaning specified in Section 2.01 hereof.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms as used in this Agreement, the Fee Agreement or the Note refer to this Agreement, the Fee Agreement or the Note as from time to time amended and supplemented. Any reference herein to a particular Section or Article shall, unless otherwise indicated, refer to the appropriate section or article of this Agreement. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, districts, agencies and bodies.

Section 1.02. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP.

Section 1.03. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any LC Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.04. UCC Terms. Terms defined in the UCC in effect on the Effective Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

Section 1.05. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Term Benchmark Loan” or a “RFR Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Term Benchmark Borrowing” or a “RFR Borrowing”).

ARTICLE II

THE COMMITMENT

Section 2.01. Loans. Subject to the terms and conditions set forth herein, the Lender agrees to make loans to the Borrower from time to time, on any Business Day during the Availability Period; *provided, however*, that after giving effect to any Borrowing, the Revolving Credit Exposure shall not exceed the Commitment, subject to any reductions thereof pursuant to the terms hereof. Subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.04, and reborrow under this Section 2.01. Each Loan shall bear interest as set forth in Section 2.07 hereof. Each Loan extended hereunder shall be made solely (i) to pay Costs of Issuance and for working capital and other general operational purposes of the Borrower, including without limitation, the purchase of Products and (ii) to make Cash Collateral Loans (each such Loan described in the immediately preceding clauses (i) and (ii), a “*Working Capital Loan*” and collectively, the “*Working Capital Loans*”), in an aggregate amount not to exceed the Revolving Credit Availability at such time. For the avoidance of doubt, proceeds of Loans may not be used for long-term capital expenditures other than long term purchases of Products pursuant to PPAs.

Section 2.02. Borrowings of Loans. (a) Each Borrowing shall be made upon the Borrower’s irrevocable notice to the Lender, which may be given by (A) telephone or (B) a Borrowing Request; *provided* that any telephonic notice must be confirmed immediately by delivery to the Lender of a Borrowing Request. Each such Borrowing Request must be received by the Lender (i) in the case of a Term Benchmark Borrowing, not later than 11:00 a.m. (New York City time) on the third (3rd) Business Day immediately preceding the requested date of any such Borrowing and (ii) in the case of an ABR Borrowing, not later than 11:00 a.m. (New York City time) on the requested date of any such Borrowing (with respect to each such Loan, as

applicable, the “*Borrowing Date*”). Each Borrowing shall be in the principal amount of \$100,000 or a whole multiple of \$25,000 in excess thereof. Each Borrowing Request (whether telephonic or written) shall specify the information set forth in *Exhibit B* attached hereto. The Revolving Credit Exposure at any time shall not exceed the Commitment at such time.

(b) Following receipt of a Borrowing Request, upon satisfaction of the applicable conditions set forth in Section 3.02 (and, if such Borrowing is the initial Borrowing, Section 3.01), the Lender shall make the requested funds available to the Borrower.

Section 2.03. Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of maintenance and operating requirements to the Borrower, including, but not limited to, PPA collateral obligations, collateral postings with the CAISO and the posting of collateral pursuant to the requirements of a Governmental Authority or the tariff of any local utility (including San Diego Gas & Electric Company and Southern California Edison Company), including the CPUC, in the form of a Letter of Credit Request at any time and from time to time during the Availability Period and prior to the Final Letter of Credit Expiration Date. Subject to the terms and conditions set forth herein, the Lender agrees (A) from time to time on any Business Day during the period from the Effective Date until the Final Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the Borrower, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b) hereof, and (B) to honor drawings under the Letters of Credit; *provided* that after giving effect to any LC Credit Extension with respect to any Letter of Credit, the Revolving Credit Exposure at any time shall not exceed the Commitment at such time. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the LC Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower’s ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Lender shall not be under any obligation to issue, amend or extend any Letter of Credit if:

(A) the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Lender has approved such expiry date in writing;

(B) the expiry date of the requested Letter of Credit would occur after the Final Letter of Credit Expiration Date, unless the Lender has approved such expiry date in writing;

(C) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing, amending or

extending the Letter of Credit, or any Law applicable to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance, amendment or extension of letters of credit generally or the Letter of Credit in particular or shall impose upon the Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Lender in good faith deems material to it;

(D) the issuance, amendment or extension of the Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally;

(E) except as otherwise agreed by the Lender, the Letter of Credit is in an initial stated amount less than \$50,000;

(F) the Letter of Credit is to be denominated in a currency other than Dollars;
or

(G) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The Lender shall be under no obligation to amend any Letter of Credit if (A) the Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(b) *Procedures for Issuance, Amendment and Extension of Letters of Credit.* (i) Each Letter of Credit shall be issued, amended or extended, as the case may be, upon the request of the Borrower delivered to the Lender in the form of a Letter of Credit Request, appropriately completed and signed by an Authorized Officer. Such Letter of Credit Request may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the Lender, by personal delivery or by any other means acceptable to the Lender. Such Letter of Credit Request must be received by the Lender not later than 4:00 p.m. (New York City time) at least five (5) Business Days (or such later date and time as the Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Request shall specify in form and detail satisfactory to the Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Request shall be modified to specify in form and detail satisfactory to the Lender (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof

(which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Lender may require. Additionally, the Borrower shall furnish to the Lender such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any LC Documents, as the Lender may require.

(ii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Lender will also deliver to the Borrower a true and complete copy of such Letter of Credit or amendment.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) one (1) year from issuance and at or prior to the close of business on the date that is thirty (30) days prior to the Maturity Date.

(d) *Drawings and Reimbursements.* Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Borrower shall promptly notify the Lender thereof. Not later than 4:00 p.m. (New York City time) on the third (3rd) Business Day after the date of any payment by the Lender under a Letter of Credit (each such date, an “*Honor Date*”), the Borrower shall reimburse the Lender in an amount equal to the amount of such drawing; *provided* that, if such drawing is not less than \$100,000, the Borrower may, subject to the conditions to Borrowing set forth herein, request in accordance with Section 2.02 that such payment be financed with a Borrowing in an equivalent amount and, to the extent so financed, the Borrower’s obligation to make such payment shall be discharged and replaced by the resulting Borrowing (each such Borrowing, a “*Reimbursement Loan*” and collectively, the “*Reimbursement Loans*”). For the date from and including the Honor Date of such drawing to but excluding the earliest of (i) the date that such Reimbursement Obligation is repaid in full, (ii) the third (3rd) Business Day after such Honor Date and (iii) the date on which such Reimbursement Obligation is financed with a Reimbursement Loan pursuant to the foregoing provisions, such Reimbursement Obligation shall bear interest at the Alternate Base Rate plus the Applicable Rate. Interest on Reimbursement Obligations shall be paid when such Reimbursement Obligation is due or otherwise repaid. If a Reimbursement Obligation is not either financed with a Reimbursement Loan or repaid, in each case, on or before the third (3rd) Business Day after the Honor Date of such drawing, an Event of Default shall be deemed to have occurred. Any notice given by the Lender pursuant to this Section 2.03(d) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(e) *Obligations Absolute.* The obligation of the Borrower to reimburse the Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Basic Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Lender or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the Lender of any requirement that exists for the Lender's protection and not the protection of the Borrower or any waiver by the Lender which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Lender and its correspondents unless such notice is given as aforesaid.

(f) *Role of the Lender.* The Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Lender shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit)

or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee (in each case, including, without limitation, any PPA Counterparty and the CAISO) with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Lender, any of its Related Parties nor any correspondent, participant or assignee of the Lender shall be liable or responsible for any of the matters described in Section 2.03(d) hereof. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Lender shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Lender may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("*SWIFT*") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) *Applicability of ISP and UCP; Limitation of Liability.* Unless otherwise expressly agreed by the Lender and the Borrower when a Letter of Credit is issued the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the Lender shall not be responsible to the Borrower for, and the Lender's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) *Conflict with Other Documents.* In the event of any conflict between the terms hereof and the terms of any LC Document, the terms hereof shall control.

Section 2.04. Prepayments.

(a) *Optional.* The Borrower may, upon notice to the Lender pursuant to delivery to the Lender of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty subject to Section 8.03; *provided* that, unless otherwise agreed by the Lender (A) such notice must be received by Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to any date of prepayment and (B) any prepayment of Loans shall be in a minimum principal amount of \$1,000,000 or such lesser amount equal to the total outstanding principal amount of such Loan if the total outstanding principal amount thereof is less than \$1,000,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date

specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 8.03.

(b) *Mandatory.*

(i) *Outstandings.* If for any reason at any time the Revolving Credit Exposure at any time exceeds the Commitment, the Borrower shall, without notice, prepay the applicable Loans (together with all accrued but unpaid interest thereon) and/or cash collateralize the applicable LC Exposure in an aggregate amount equal to such excess; *provided, however*, that the Borrower shall not be required to cash collateralize the LC Exposure pursuant to this Section 2.04(b)(i) unless, after the prepayment of the applicable Loans, the Revolving Credit Exposure exceeds the Commitment at such time. For the avoidance of doubt, the Minimum Collateral Amount shall not apply to the cash collateral required under this Section 2.04(b)(i) unless an Event of Default has occurred and is continuing.

(ii) *Application of Mandatory Prepayments.* Prepayments made pursuant to this Section 2.04(b), *first*, shall be applied to the outstanding applicable Loans, and, *second*, shall be used to cash collateralize the remaining LC Exposure; and, in the case of prepayments under the Commitment required pursuant to clause (i) of this Section 2.04(b), the amount remaining, if any, after the prepayment in full of all Loans outstanding at such time and the cash collateralization of the remaining LC Exposure in full (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the “*Reduction Amount*”) may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been cash collateralized, the funds held as cash collateral shall be applied (without any further action by or notice to or from the Borrower that has provided cash collateral) to reimburse the Lender.

All prepayments under this Section 2.04(b) shall be subject to Section 8.03, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

Section 2.05. Termination or Reduction of Commitment; Extensions of Existing Maturity Date.

(a) *Termination or Reduction.* Subject to the provisions of the Fee Agreement, (i) the Borrower may, upon notice to the Lender, terminate the Commitment or from time to time permanently reduce the Commitment; *provided* that (i) any such notice shall be received by the Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce the Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Revolving Credit Exposure would exceed the Commitment. Failure by the Borrower to designate in the notice required under clause (i) of this Section 2.05(a) whether

the Commitment is to be permanently reduced shall be deemed to be a permanent reduction in the Commitment.

(b) *Extensions of Existing Maturity Date.* (i) The Existing Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.05(b). Upon receipt of written request of the Borrower to extend the Existing Maturity Date, received no more than ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date (the “Existing Maturity Date”), the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender’s decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); *provided, however*, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Existing Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

(ii) As a condition precedent to each such extension of the Existing Maturity Date pursuant to Section 2.05(b)(ii), the Borrower shall deliver to the Lender a certificate of the Borrower dated as of the Existing Maturity Date signed by an Authorized Officer of the Borrower certifying that, as of such date, both before and immediately after giving effect to such extension, (A) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct and (B) no Potential Event of Default or Event of Default shall have occurred and be continuing.

Section 2.06. Repayment of Loans. The Borrower hereby unconditionally promises to pay to the Lender on the Maturity Date, the aggregate principal amount of Loans outstanding on such date, together with accrued interest thereon. Subject at all times to Section 2.16 hereof, the Borrower shall repay to the Lender on the Maturity Date all other Obligations payable hereunder.

Section 2.07. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each RFR Loan shall bear interest at a rate per annum equal to Adjusted Daily Simple SOFR plus the Applicable Rate.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 3% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

Section 2.08. Fees. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee, the LC Facility Fee, the Termination Fee and the Reduction Fee. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.09. Computation of Interest and Fees. Interest computed by reference to the Term SOFR Rate or Daily Simple SOFR hereunder shall be computed on the basis of a year of three hundred sixty (360) days, and actual days elapsed. Interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days in a leap year), and actual days elapsed. In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan (or Reimbursement Obligation, if applicable) shall be computed on a daily basis based upon the outstanding principal amount of such Loan (or Reimbursement Obligation, if applicable) as of the applicable date of determination, *provided* that any Loan (or Reimbursement Obligation, if applicable) that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day. The applicable Alternate Base Rate, Adjusted Term SOFR Rate, Term SOFR Rate, Adjusted Daily Simple SOFR or Daily Simple SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

All computations of fees shall be made on the basis of a year of three hundred sixty (360) days, and actual days elapsed. Interest shall accrue on each Loan (including any Reimbursement Obligation of an LC Exposure) for the day on which such Loan is made (or, in the case of Reimbursement Obligations, the day on which a related drawing is not reimbursed), and shall not accrue for the day on which the Loan or such portion is paid, *provided* that any Loan (or Reimbursement Obligation, if applicable) that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.10. Evidence of Debt. The Borrowings made from the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Borrowings made from the Lender by the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise

affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. The Loans shall be evidenced by the Note to be issued on the Effective Date, initially registered in the name of, and payable to, the Lender and otherwise duly completed. The Lender may attach schedules to the Note and endorse thereon the date, amount and maturity of Loans and payments with respect thereto.

Section 2.11. Payments. (a) All payments to be made by the Borrower under this Agreement or under the Fee Agreement shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. All payments hereunder to the Lender shall be made by wire transfer to the Lender at its offices at 383 Madison Avenue, New York, New York, or as otherwise set forth in the invoice from the Lender for such payment.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, Reimbursement Obligations, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and Reimbursement Obligations then due hereunder.

Section 2.12. Maximum Interest Rate. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Interest Rate. If for any interest period the applicable interest rate would exceed the Maximum Interest Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Interest Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Interest Rate, any Obligation hereunder will bear interest at the Maximum Interest Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by applicable law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.12 that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

Section 2.13. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by the time that a Borrowing Request would be required under Section 2.02 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and shall be signed by an Authorized Officer of the Borrower.

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing or, if a Term Benchmark Borrowing is not available hereunder, a RFR Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “*Interest Period*”.

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be deemed to have an Interest Period that is one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing or an RFR Borrowing and (ii) unless repaid, (A) each Term Benchmark Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (B) each RFR Borrowing shall be converted to an ABR Borrowing on the last day of the calendar month.

Section 2.14. Alternate Rate of Interest; Illegality. (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14, if:

(i) the Lender determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term

Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Lender determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans (or its Loan) included in such Borrowing;

then the Lender shall give notice thereof to the Borrower by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.13 or a new Borrowing Request in accordance with the terms of Section 2.02(a), (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (A) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (B) an ABR Borrowing if Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above and (2) any Borrowing Request that requests a RFR Borrowing shall instead be deemed to be a Borrowing Request for an ABR Borrowing; *provided* that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of the notice from the Lender referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.13 or a new Borrowing Request in accordance with the terms of Section 2.02(a), (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Lender to, and shall constitute, (x) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Lender to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Basic Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark

Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lender without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document.

(c) Notwithstanding anything to the contrary herein or in any other Basic Document, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(d) The Lender will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.14.

(e) Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will no longer be representative, then the Lender may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (C) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (D) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for (i) a Term Benchmark Borrowing, conversion to or continuation of Term Benchmark Loans to be made, converted or continued or (ii) a RFR Borrowing or conversion to RFR Loans, during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing or RFR Borrowing, as applicable, into a request for a Borrowing of or conversion to (A) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Lender to, and shall constitute, (x) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Lender to, and shall constitute an ABR Loan.

Section 2.15. Cash Collateral. (a) If (i) as of any Letter of Credit Expiration Date, any related LC Exposure for any reason remains outstanding and is not refinanced with a Reimbursement Loan or (ii) any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon (such amount, the "*Minimum Collateral Amount*"); *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.01(f) hereof.

(b) The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option of the Lender with the Borrower's consent such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for Reimbursement Obligations, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the Reimbursement Obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral

hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned promptly to the Borrower, but in no event later than within three (3) Business Days, after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

Section 2.16. Payment and Security for Obligations. The Net Revenues shall be and hereby are pledged by the Borrower to the payment of the Obligations on a first-priority basis. The Obligations of the Borrower under this Agreement, the Fee Agreement and the other Basic Documents are limited obligations, payable solely from, and secured by a first-priority pledge of and lien on, Net Revenues. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made is irrevocable until the Commitment has expired or been terminated in accordance with the terms hereof and all Obligations hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all payments made by the Lender pursuant to a Letter of Credit shall have been reimbursed. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt. There shall be no pledge of or Lien on Net Revenues that ranks senior to the Obligations.

ARTICLE III

CONDITIONS PRECEDENT TO BORROWINGS

Section 3.01. Conditions to Initial Borrowing; Authority; Enforceability. This Agreement shall become binding on the parties hereto upon the satisfaction of the following conditions precedent (all Basic Documents and other documents to be delivered to the Lender pursuant to this Section 3.01 shall be subject to prior approval as to form and substance by the Lender, with delivery by the Lender of its signature page to this Agreement evidencing the Lender's acknowledgement that the conditions set forth in this Section 3.01 have been satisfied, unless otherwise waived in writing):

(a) *Documents.* The Lender has received executed copies of the Basic Documents executed by the Borrower on the Effective Date.

(b) *Opinions.* The Lender has received from the Borrower's legal counsel an opinion, addressed to the Lender and dated as of the Effective Date, as to the due authorization, execution and delivery of this Agreement and the other Basic Documents, and as to the validity and enforceability with respect to the Borrower of this Agreement and the other Basic Documents, the pledge of Net Revenues securing the Obligations

constituting a valid pledge, and such other matters as the Lender may reasonably request, in form and substance satisfactory to the Lender and its counsel.

(c) *Certificate.* The Lender has received (i) certified copies of the Joint Powers Agreement, the Lockbox Security Documents, each PPA entered into with a PPA Counterparty that is also party to any Lockbox Security Document as of the Effective Date, and the Resolution, (ii) a certificate or certificates of one or more Authorized Officers dated the Effective Date certifying the accuracy of the Borrower's representations and warranties contained in Article IV hereof is true and correct on and as of the date of such certificate and that no Potential Event of Default or Event of Default has occurred and is continuing, and (iii) and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement, the Note and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, and that the conditions precedent set forth in this Section 3.01 have been satisfied;

(d) *Financial Statements and Projections.* The Lender has received (i) the audited financial statements of the System for the Fiscal Year ended June 30, 2022, and all subsequent unaudited quarterly statements of the Borrower prepared prior to the Effective Date and (ii) a copy of the plan and forecast (including a projected consolidated income statement, cash flow statement and budget relating to Projected Revenues and Projected Operation and Maintenance Expenses) of the System for each month of the fiscal year ending June 30, 2023 and each fiscal year thereafter ending no earlier than June 30, 2025 (as the same may be revised and to the extent such revisions are approved in the sole but reasonable discretion of the Lender from time to time pursuant to Section 5.01(f), the "Projections"), in form and substance reasonably satisfactory to the Lender.

(e) *USA PATRIOT Act, Etc.* The Lender shall have received, (i) (x) at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act to the extent requested in writing to the Borrower at least ten (10) days prior to the Effective Date, and (y) a properly completed and signed IRS Form W-8 or W-9, as applicable, for the Borrower, and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, and to the extent requested by the Lender, in a written notice to the Borrower at least the (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower.

(f) *RCB Debt Obligations.* The Lender has received evidence reasonably satisfactory to it that all RCB Debt Obligations have been paid in full in immediately available funds (for the avoidance of doubt, including the cancellation of any outstanding letters of credit) on or before the Effective Date, and such RCB Debt Obligations and the documents thereto shall be terminated to the satisfaction of the Lender.

(g) *Other Matters.* The Lender has received such other opinions, certificates and documents it may reasonably request relating to the existence of the Borrower, the authority for and the validity of this Agreement and each of the other Basic Documents,

and any other matters relevant hereto or thereto, all in form and substance satisfactory to the Lender.

Section 3.02. Conditions to All Credit Extensions. The obligation of the Lender to honor any request for a Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower set forth in Article IV (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, in each case, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Potential Event of Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Lender shall have received a Borrowing Request or Letter of Credit Request, as applicable, in accordance with the terms, conditions and requirements hereof.

Each Borrowing Request, application for any Letter of Credit and application for amendment to a Letter of Credit submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 3.02(a) and (b) hereof have been satisfied on and as of the date of the applicable Borrowing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower hereby represents and warrants as follows:

Section 4.01. Organization, Powers, Etc. The Borrower (i) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2, (ii) has full and adequate power to own its Property and (iii) has full power and authority to execute (or adopt, as the case may be), deliver and perform its obligations under this Agreement and the other Basic Documents and to borrow hereunder. Except for all permits, licenses and approvals for the operation of the Borrower yet to be obtained, the Borrower is qualified to operate in each jurisdiction in which the nature of the business conducted by it makes such qualification necessary and has full power and authority to own its properties and carry on its business as now conducted.

Section 4.02. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance of this Agreement and the other Basic Documents and the making of the Borrowings and the issuance of Letters of Credit as contemplated hereunder (a) have been duly authorized by

the Borrower, (b) do not and will not conflict with, or result in a violation of, any provision of law, including the Joint Powers Agreement or any order, rule or regulation of any court or Governmental Authority and (c) do not and will not conflict with, result in a violation of or constitute a default under, the Joint Powers Act, or any other ordinance, resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound.

Section 4.03. Governmental Consent or Approval. The execution, delivery and performance of this Agreement and the other Basic Documents and the making of the Borrowings contemplated hereunder do not and will not require registration with, or the consent or approval of, or any other action by, any Governmental Authority other than those which have been made or given and are in full force and effect.

Section 4.04. Binding Obligation. This Agreement and the other Basic Documents are legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms except as enforcement thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and subject to equitable principles in the event that equitable remedies are sought.

Section 4.05. Absence of Material Litigation. Except as disclosed in writing to the Lender prior to the Effective Date, there is no action or investigation pending with service of process accomplished against the Borrower or, to the knowledge of the Borrower, threatened in writing against the Borrower before any court, administrative agency or arbitrator which (i) in the reasonable opinion of the Borrower's attorney is with merit and if determined adversely would have a Material Adverse Effect or (ii) relates to the execution, delivery, validity, enforceability or performance by the Borrower of any Basic Document or the validity of the Joint Powers Agreement.

Section 4.06. Financial Condition. The audited financial statements of the System for the Fiscal Year ended June 30, 2022, and the most recent unaudited quarterly statements of the System delivered by the Borrower to the Lender since that day, have been prepared in conformity with GAAP (except as noted therein), and fairly present, in all material respects, the financial condition of the System, as of the dates thereof. Since the date of the audited financial statements or unaudited quarterly statements of the System, whichever was most recently furnished to the Lender, there has been no Material Adverse Change in the operations, assets, liability or financial condition of the System.

Section 4.07. Amendments. None of the Basic Documents have been amended except by such amendments or supplements as have been delivered to the Lender prior to the execution of this Agreement. The Joint Powers Agreement has not been amended, supplemented, modified, rescinded or repealed and remains in full force and effect as of the date hereof.

Section 4.08. Liens. This Agreement creates a valid first-priority Lien on and pledge of Net Revenues to secure the payment and performance of the Borrower's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such

Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

Section 4.09. No Defaults. (a) No Potential Event of Default or Event of Default has occurred and is continuing.

(b) No “default” or “event of default” (after giving effect to applicable cure periods, if any) has occurred and is continuing with respect to the Borrower under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPAs with a notional amount or amounts, in the aggregate, of \$5,000,000) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

Section 4.10. No Proposed Legal Changes. Except as disclosed in writing to the Lender prior to the Effective Date, there is no (i) amendment, or to the best knowledge of the Borrower, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State, any State law, or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, or (ii) or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, or any published judicial decision interpreting any of the foregoing, in each case, the effect of which could reasonably be expected to adversely affect the validity, enforceability, security for, or priority of payment of the Obligations or the ability of the Borrower to perform its obligations under this Agreement or the other Basic Documents to which the Borrower is a party.

Section 4.11. Compliance. The Borrower is in substantial compliance with all laws, ordinances, orders, rules and regulations applicable to it, except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 4.12. Environmental Laws. The Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

Section 4.13. Margin Stock. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. ERISA. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any “employee benefit plans” that are subject to Title IV of ERISA.

Section 4.15. Incorporation of Representations and Warranties by Reference. The Borrower hereby makes to the Lender the same representations and warranties as are set forth by it in each Basic Document (other than this Agreement and the Fee Agreement) to which it is a party, which representations and warranties, together with the related defined terms contained therein, are hereby incorporated herein by reference for the benefit of the Lender with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety and were made as of the date hereof. No amendment to such representations and warranties or defined terms made pursuant to any Basic Document (other than this Agreement and the Fee Agreement) shall be effective to amend such representations and warranties and defined terms as incorporated by this reference without the prior written consent of the Lender.

Section 4.16. Immunity. The Borrower is not entitled to raise the defense of immunity (whether sovereign, governmental or otherwise) in connection with any legal proceedings to enforce or collect upon the obligations of the Borrower under this Agreement or the transactions contemplated hereby, including, without limitation, the payment of the Obligations; *provided, however,* that the procedural requirements applicable to commencing an action and exercising remedies against the Borrower differ from those provisions and requirements applicable to individuals and non-governmental entities.

Section 4.17. Anti-Terrorism Laws. The Borrower is not in violation of any Laws relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Patriot Act.

The Borrower is not any of the following:

- (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a Person with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
- (v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the OFAC or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list.

Section 4.18. System Debt. The Borrower has not incurred or issued any System Debt other than the System Debt created under this Agreement.

Section 4.19. No Existing Right to Accelerate. No Person, including, without limitation, any credit facility provider or liquidity provider, either of which provides credit enhancement or liquidity support to any System Debt that is secured by or payable from Net Revenues, or any holder of System Debt that is secured by or payable from Net Revenues, has a right under any resolution, indenture, or supplemental indenture relating to any such System Debt or under any other document or agreement relating to any System Debt, to cause an acceleration of such System Debt, or to otherwise declare the principal of and interest on any such System Debt to be immediately due and payable, prior to its maturity.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower agrees that, so long as the Lender has any Commitment hereunder or any amount payable hereunder remains unpaid:

Section 5.01. Reports, Certificates and Other Information.

(a) *Notice of Default.* Promptly upon any Authorized Officer obtaining knowledge of the occurrence of a Potential Event of Default or Event of Default or notice thereof, and in any event within three (3) Business Days thereafter, the Borrower will provide to the Lender the written statement of an Authorized Officer setting forth in reasonable detail the nature of such event and the action which the Borrower proposes to take with respect thereto;

(b) *Annual Reports.* Within two hundred seventy (270) days after the end of each Fiscal Year of the Borrower, the Borrower will deliver to the Lender financial statements, consisting of a statement of net position of the Borrower as at the end of such Fiscal Year and a statement of revenues and expenses and a statement of cash flows of the Borrower for such Fiscal Year, together with all in reasonable detail and accompanied by an unqualified opinion of a nationally recognized independent certified public accounting firm stating that such financial statements have been prepared in accordance with GAAP consistently applied;

(c) *Quarterly Reports.* Within sixty (60) days after the end of each fiscal quarter of the Borrower, the Borrower will deliver to the Lender (i) financial statements of the Borrower, consisting of a statement of net position as at the end of such fiscal quarter and a statement of revenues and expenses and a statement of cash flows of the Borrower for such fiscal quarter, (ii) statistics on number of consumers enrolled in SDCP and energy-usage statistics therefor;

Each of the financial statements furnished to the Lender pursuant to subsections (b) and (c) of this Section 5.01 shall be accompanied by a certificate signed by an Authorized Officer and addressed to the Lender, substantially in the form of *Exhibit E* hereto, (x) stating that no Event of Default or Potential Event of Default has occurred, or if any Event of Default or Potential Event of Default has occurred, specifying the nature of such Event of Default or Potential Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to

correct such Event of Default or Potential Event of Default, and (y) demonstrating compliance with the Debt Service Coverage Ratio required by Section 5.11 hereof;

(d) *Additional Notices.* (i) As soon as possible after an Authorized Officer acquires knowledge of the occurrence thereof, the Borrower will notify the Lender of the filing of a complaint by or before any court or administrative agency against the Borrower with service of process properly completed under applicable law, which, if adversely determined, in the reasonable judgment of the Borrower, is reasonably likely to have a Material Adverse Effect; and

(ii) promptly after incurrence or issuance thereof by the Borrower, copies of each agreement in respect of Parity Debt;

(e) *PPA Defaults; Modification to Lockbox Security Document(s).* (i) Promptly upon any Authorized Officer obtaining knowledge of the occurrence of (A) an event of default or notice thereof or (B) any condition or event which, with the giving of notice or lapse of time, or both, would, unless cured or waived, become an event of default thereunder, in each case, caused by the Borrower under any one (1) or more PPAs with a notional amount or amounts, in the aggregate, of \$5,000,000 or more concurrently outstanding, and in any event within five (5) days thereafter, the Borrower will provide to the Lender the written statement of an Authorized Officer setting forth the reasonable detail of such event and the action which the Borrower proposes to take with respect thereto; and

(ii) Promptly after the Borrower receives notice of the formal consideration of any proposed modification to any Lockbox Security Document;

(f) *Annual Budget.* Within forty-five (45) days of adoption, but in any event on or prior the end of each Fiscal Year, a copy of the Borrower's annual operating budget as of June 30 of the immediately following Fiscal Year, which update shall be in form and substance reasonably satisfactory to the Lender;

(g) *Reserve Policy.* The Borrower shall comply with the terms of its Reserve Policy in all respects and shall promptly notify the Lender in writing of any change proposed to the Reserve Policy that has been submitted for approval at a meeting of the governing board of the Borrower;

(h) *Enforcement of Rights under Joint Powers Agreement; Termination of the Joint Powers Agreement.* The Borrower shall at all times diligently pursue all of its rights and remedies against any Party (as defined in the Joint Powers Agreement) that seeks to withdraw or withdraws from the Borrower under the Joint Powers Agreement, or that is terminated as a Party to the Joint Powers Agreement, including, without limitation, seeking repayment of obligations of the Borrower attributable to such Party under the Joint Powers Agreement, in each case to the fullest extent contemplated by the Joint Powers Agreement;

(i) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing of any change proposed to the Investment Policy that has been submitted for approval at a meeting of the governing board of the Borrower, which proposed change would increase the types of investments permitted thereby;

(j) *Rates; Rate Notice.* (i) The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be set in accordance with applicable law and shall be sufficient to provide the Borrower with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year (including, without limitation, all Obligations when due hereunder) (collectively, the “*Generation Rates*”); and

(ii) The Borrower shall promptly notify the Lender in writing, not less than ten (10) Business Days after adjustment thereof, of any adjustment to the Generation Rates by a cumulative integer of five percent (5%) or greater as compared to the Generation Rates assumed in the then-current annual budget and provide an updated annual budget reflecting such revised Generation Rates; and

(k) *Other Information.* The Borrower will provide to the Lender such other information respecting the business, affairs, financial condition or operations of the Borrower, as the Lender may from time-to-time reasonably request.

Section 5.02. Inspections; Discussion. At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days’ notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower respecting the operations of the Borrower, to examine the books of account of the Borrower respecting the operations of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower respecting the operations of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request; *provided, however,* that if required by the Borrower, the Lender shall, as a condition to being permitted by the Borrower to make or conduct any such visit, inspection, examination or discussion, certify to the Borrower that the same is being made or conducted solely in order to assist the Lender in evaluating its Commitment. The Lender agrees that all information obtained by it as a result of any such visit, inspection, examination or discussion is confidential and shall not be made public or divulged to third parties, except with the prior written consent of the Borrower or as compelled by law.

Section 5.03. Preservation of Pledge. The Borrower will take any and all actions necessary or reasonably requested by the Lender to maintain the pledge of Net Revenues and the priority thereof set forth in this Agreement.

Section 5.04. Taxes and Liabilities. The Borrower will pay all its indebtedness and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, except those indebtedness, obligations, taxes, assessments or governmental charges or levies which the Borrower shall in good faith contest by

proper legal proceedings if the Borrower shall in all such cases have set aside on its books adequate (in the Borrower's sole discretion) reserves with respect thereto.

Section 5.05. [Reserved].

Section 5.06. Compliance with Basic Documents; Operation and Maintenance of System. (a) the Borrower shall perform and comply with covenant set forth in each of the Basic Documents (other than this Agreement) and any other agreements, instruments or documents evidencing System Debt. By the terms of this Agreement, the Lender is hereby made a third-party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.06(a) with the same effect as if it were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Lender and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Lender. The Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender.

(b) the Borrower will enter into, perform and maintain such contractual relationships and PPAs as are necessary for the Borrower to provide Products and such other services and resources as are necessary for the operation of the System.

Section 5.07. Disclosure to Participants. The Borrower shall permit the Lender to disclose any information received by the Lender in connection herewith including, without limitation, the financial information described in Section 5.01 hereof, to any participant or assignee as described in Section 9.05 hereof.

Section 5.08. Further Assurances. From time to time hereafter, the Borrower will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Lender may reasonably request, for the purposes of implementing or effectuating the provisions of the Basic Documents and this Agreement or for the purpose of more fully perfecting or renewing the rights of the Lender with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the Borrower which may be deemed to be a part thereof).

Section 5.09. Existence, Etc. The Borrower will maintain its existence and the existence of the System. The Borrower will preserve and keep in force and effect all licenses, permits, franchises and qualifications necessary to the proper conduct of its operations. Subject to Section 6.04, the Borrower will not amend any organizational document or any agreement directly or

indirectly governing the operations or management of the Borrower in a manner that could reasonably be expected to result in a Material Adverse Effect.

Section 5.10. No Different or More Restrictive Terms. The Borrower shall not, directly or indirectly, enter into or otherwise consent to any Other Credit Agreement, which such Other Credit Agreement provides the counterparty thereto with additional or more restrictive events of default or greater rights and remedies than are provided to the Lender in this Agreement without the prior written consent of the Lender.

Section 5.11. Debt Service Coverage Ratio. The Debt Service Coverage Ratio shall be not less than 1.10 to 1.00 as of the last day of the fiscal quarter most recently ended, commencing with the last fiscal quarter ended March 31, 2023; *provided, however*, in the event the Debt Service Coverage Ratio for any fiscal quarter is less than 1.10 to 1.00 but the Days Liquidity on Hand for such fiscal quarter equals or exceeds ninety (90) days, then the Borrower shall be deemed to be in compliance with this Section 5.11 for such period (the “*Liquidity Cure Right*”); *provided, further*, that in no event shall the Borrower be permitted to exercise Liquidity Cure Rights hereunder more than three (3) times during any four (4) consecutive fiscal quarter period.

The Borrower shall determine the Debt Service Coverage Ratio and the Days Liquidity on Hand at each fiscal quarter end and shall provide the Lender with written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than sixty (60) days following the end of each fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

Section 5.12. Maintenance of Insurance. The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however*, that the Borrower may maintain self-insurance from a California public agency risk pool. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million Dollars (\$1,000,000), whichever is less.

Section 5.13. Accuracy of Information. The Borrower will ensure that any information, including financial statements or other documents, furnished to the Lender in connection with this Agreement or any other Basic Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 5.13; *provided* that, with respect to the Projections, the Borrower will cause the

Projections to be prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 5.14. Lockbox Security Documents and PPAs. The Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and the PPAs. The Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to have a materially adverse effect on the interests of the Lender without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any proposed action referred to in this Section 5.14.

ARTICLE VI

NEGATIVE COVENANTS OF THE BORROWER

The Borrower agrees that, so long as the Commitment is outstanding hereunder or any amount payable hereunder remains unpaid, it will not:

Section 6.01. Compliance with Laws, Etc. Violate any Laws, rules, regulations, or governmental orders to which it is subject, which violation involves a reasonable likelihood of having a Material Adverse Effect.

Section 6.02. System Debt. (a) Issue, incur or assume to exist any Debt other than (i) the System Debt created under this Agreement, (ii) the Parity Debt described in clause (b) below, (iii) the Subordinate Debt described in clause (c) below and (iv) the Debt evidenced by the RCB Promissory Note in an amount not to exceed \$147,000 (excluding any replacements, extensions, modifications or renewals of such Debt);

(b) Issue, incur or assume to exist any Parity Debt except for (i) the Obligations, and (ii) other Parity Debt issued or incurred with the Borrower's concurrent delivery to the Lender of a written certificate, appropriately completed and signed by an Authorized Officer, in form and substance satisfactory to the Lender, and including the following:

(1) certifying that (A) no Potential Event of Default or Event of Default has occurred and is continuing immediately before and after the issuance or incurrence of such Parity Debt and (B) such Parity Debt does not exceed at any time any limitation set forth in (I) any provision of law, including the Community Energy Aggregation Act or any order, rule or regulation of any court or Governmental Authority or (II) any other ordinance, resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound, and

(2) (A) setting forth estimated Net Revenues (in reasonable detail and with reasonable assumptions) for the period during which such other Parity Debt will be

outstanding, (B) setting forth projected Annual Debt Service (in reasonable detail and with reasonable assumptions) for the next twelve-month period and (C) demonstrating that Projected Net Revenues for the period during which such other Parity Debt will be outstanding is at least equal to 1.30 times the projected Annual Debt Service for such period; and

(c) Issue, incur or assume to exist any Subordinate Debt, except for any Subordinate Debt issued or incurred with the Borrower's concurrent delivery to the Lender of evidence reasonably satisfactory to the Lender that such Subordinate Debt has been subordinated to the Obligations on terms satisfactory to the Lender and a written certificate of the Borrower, appropriately completed and signed by an Authorized Officer, in form and substance satisfactory to the Lender, and certifying that (I) no Potential Event of Default or Event of Default has occurred and is continuing immediately before and after the issuance or incurrence of such Subordinate Debt, (II) such Subordinate Debt does not exceed at any time any limitation set forth in (x) any provision of law, including the Joint Powers Act or any order, rule or regulation of any court or Governmental Authority or (y) any other ordinance, resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound and (III) such Subordinate Debt shall be subordinated to the Obligations on terms satisfactory to the Lender.

Section 6.03. Swap Contracts. Not enter into any Swap Contract without prior approval from the Lender, except (a) Swap Contracts entered into to hedge or mitigate risks to which the Borrower has actual exposure, and (b) Swap Contracts entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower, and, in each case, the payments under which are not secured by any Lien on any portion of the Net Revenues securing any termination payment pursuant to any Swap Contract to be *pari passu* or senior to the Lien on the Net Revenues securing the payment of Obligations hereunder or under the Fee Agreement, *provided, however*, that it is understood that PPAs are regularly entered into to hedge against pricing and supply risks in connection with energy requirements and Regulatory Compliance Products may participate in the Lockbox Security Documents.

Section 6.04. Amendments. Except as expressly consented to in writing by the Lender, (i) agree to the amendment of any document such that the security for or payments hereunder are materially impaired or reduced or the security for or priority of the Obligations is materially adversely affected; or agree to any amendment of any document which will materially adversely affect the Borrower's ability to pay any of the Obligations hereunder or the security for the Obligations hereunder or the rights or obligations of the Lender in respect thereof; or (ii) amend, modify or supplement in any manner whatsoever the Resolution, the Basic Documents, the Joint Powers Agreement, the PPAs, or the Lockbox Security Documents, which could reasonably be expected to result in a Material Adverse Effect.

Section 6.05. Waiver of Immunity. Assert or claim the defense of immunity (whether sovereign, governmental or otherwise) in connection with any legal proceedings to enforce or collect upon the obligations of the Borrower under this Agreement or the transactions contemplated hereby or thereby, including, without limitation, the payment of the Obligations; *provided, however*, that the procedural requirements applicable to commencing an action and

exercising remedies against the Borrower differ from those provisions and requirements applicable to individuals and non-governmental entities.

Section 6.06. Offering Documents. Refer to the Lender in any offering document or make any changes in reference to the Lender in any offering document without the Lender's prior written consent thereto.

Section 6.07. Liens on Net Revenues. Create, suffer to exist or permit any Lien on the Net Revenues other than Liens (i) created by this Agreement, (ii) granted under the Existing RCB Assignment of Deposit Account (excluding any replacements, extensions, modifications or renewals of such Liens) or (iii) permitted by any other agreement evidencing System Debt issued or incurred in accordance with the terms of this Agreement.

Section 6.08. Use of Proceeds. (a) Use the proceeds of any Loan for any purposes other than the purposes set forth in Section 2.01. Use the Letters of Credit for any purpose other than the uses set forth in Section 2.03(a). Use any portion of the proceeds of a Loan for the purpose of carrying or purchasing any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) nor incur any Debt which is to be reduced, retired or purchased by the Borrower out of such proceeds. For the avoidance of doubt, proceeds of Loans may not be used for long-term capital expenditures other than long term purchases of Products pursuant to PPAs.

(b) Request any Borrowing or Letter of Credit, or use, or permit its directors, officers, employees and agents to use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Terrorism Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.09. Available Net Revenues. Use Net Revenues for any purpose other than: (i) payment of Operation and Maintenance Expenses; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt permitted hereunder; (iv) payment of debt service on, and fees associated with, Subordinate Debt permitted hereunder so long as no Event of Default has occurred and is continuing or would result therefrom; (v) capital expenditures in connection with assets that will become part of the System; (vi) as cash collateral deposited pursuant to the terms of the Existing RCB Assignment of Deposit Account in an amount not to exceed \$147,000 and (viii) any other lawful purpose that inures to the direct benefit of the System.

Section 6.10. Preservation of Corporate Existence, Etc. Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State. The Borrower shall not permit the termination of the Joint Powers Agreement or the cessation of Borrower's CCA Program (as defined in the Joint Powers Agreement).

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any of the following events shall be an “Event of Default” hereunder, unless waived in writing by Lender:

(a) the Borrower shall (i) fail to pay the principal of, or interest on, any Loan or any Reimbursement Obligation or deposit any funds as cash collateral in respect of LC Exposure when the same shall become due and payable in accordance with its terms or (ii) fail to pay any other amount due and owing hereunder or under the Fee Agreement within three (3) Business Days of when due;

(b) any representation, warranty, certification or statement made by the Borrower in this Agreement or in any other Basic Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Basic Document shall (in any such case) have been incorrect or untrue in any materially adverse respect when made or deemed to have been made;

(c) the Borrower shall default in the due performance or observance of any term, covenant or agreement contained in Sections 5.01(a), 5.01(b), 5.01(c), 5.01(d), 5.01(e), 5.01(g)(i), 5.01(j), 5.03, 5.06, 5.11, 5.12 or Article VI hereof;

(d) the Borrower shall default in the due performance or observance of any term, covenant or agreement contained herein other than those set forth in clause (a) or (c) of this Section 7.01 and such default, if capable of being remedied, shall remain unremedied for thirty (30) days after the earlier of (i) written notice thereof shall have been given to the Borrower by the Lender or (ii) the date on which the Chief Financial Officer of the Borrower, or, in each case, any other Person acting in such capacity or as deputy thereto, first becomes aware of such default;

(e) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay System Debt, or the Borrower repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement any other Basic Document or any operative document related to System Debt;

(f) (i) the Borrower shall admit in writing its inability to pay its debts generally as they become due, or shall become insolvent within the meaning of Section 101(32) of the United States Bankruptcy Code; or (ii) either the Borrower or a governmental authority of competent jurisdiction shall declare a moratorium on the payment of the Borrower’s

Debts or apply for, consent to or acquiesce in the appointment of a trustee, custodian, liquidator or receiver for the Borrower or any substantial part of its property, or shall take any action to authorize or effect any of the foregoing; or (iii) in the absence of any such application, consent or acquiescence, a trustee, custodian, liquidator or receiver shall be appointed for the Borrower or for a substantial part of its property or revenues and shall not be discharged within a period of sixty (60) days; or (iv) any governmental authority having jurisdiction over the Borrower shall make a finding or ruling or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, or comparable extraordinary restriction on repayment when due and payable of the principal of or interest on the debts of the Borrower; or (v) any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding shall be instituted by or against the Borrower (or any action shall be taken to authorize or effect the institution by it of any of the foregoing) and if instituted against it, shall be consented to or acquiesced in by it, or shall not be dismissed within a period of sixty (60) days or an order for relief shall be granted;

(g) the Borrower shall default in the due performance or observance of any material term, covenant or agreement contained in any other Basic Document and the same shall not have been cured within any applicable cure period;

(h) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, provided in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt;

(i) one or more final, non-appealable judgments or orders for the payment of money in an aggregate amount in excess of \$2,000,000 shall be rendered or filed against the Borrower and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days;

(j) [reserved];

(k) any “event of default” under (and as defined in) any Other Credit Agreement shall occur and be continuing under such Other Credit Agreement;

(l) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any System Debt by any Governmental Authority of competent jurisdiction; or

- (m) dissolution or termination of the existence of the Borrower.

Section 7.02. Consequences of an Event of Default. If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

- (a) declare the Commitment and the obligation of the Lender to make Credit Extensions to be terminated, whereupon such Commitment and obligation shall be terminated;

- (b) by written notice to the Borrower, declare the outstanding amount of the Obligations and all other obligations of the Borrower under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

- (c) require that the Borrower provide cash collateral in an amount equal to the Minimum Collateral Amount as required in Section 2.15(a);

- (d) at the expense of the Borrower, cure any Event of Default or event of nonperformance hereunder or under any other Basic Document; *provided, however*, that the Lender shall have no obligation to effect such a cure;

- (e) by written notice to the Borrower, impose the Default Rate with respect to the Obligations (which imposition may be retroactive to the date on which such Event of Default first occurred); and

- (f) exercise, or cause to be exercised, any and all remedies as it may have under the Basic Documents and as otherwise available at Law and at equity.

If an Event of Default described in Section 7.01(f) occurs with respect to the Borrower, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under any other Basic Documents including any break funding payment or prepayment premium, shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the LC Exposure as provided in clause (c) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Section 7.03. Solely for the Benefit of Lender. The rights and remedies of the Lender specified herein are for the sole and exclusive benefit, use and protection of the Lender, and the Lender is entitled, but shall have no duty or obligation to the Borrower or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Lender hereunder or under any of the other Basic Documents.

Section 7.04. Discontinuance of Proceedings. In case the Lender shall proceed to invoke any right, remedy or recourse permitted hereunder or under the other Basic Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Lender shall have the unqualified right so to do and, in such event, the Borrower and the Lender shall be restored to their former positions with respect to the Obligations, the Basic Documents and otherwise, and the rights, remedies, recourse and powers of the Lender hereunder shall continue as if the same had never been invoked.

ARTICLE VIII

CHANGE IN CIRCUMSTANCES

Section 8.01. Increased Costs.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender (except any such reserve requirement reflected in the Adjusted Term SOFR Rate);

(ii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or any Loans made by the Lender or any Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Lender with respect to this Agreement, any Loan, or the making, maintenance or funding of any Loan, or to increase the cost to the Lender of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Lender determines that any Change in Law affecting the Lender or the Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or liquidity or on the capital or liquidity of the Lender's holding company, if any, as a consequence of this Agreement, the Commitment, the Letters of Credit issued by the Lender, or the Loans made by the Lender to a level below that which the Lender or the Lender's holding company, if any, could have achieved but for such Change in Law (taking into consideration the Lender's policies and the

policies of the Lender's holding company, if any, with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company, if any, for any such reduction suffered.

(c) *Certificates for Reimbursement.* Promptly upon obtaining knowledge of the expected occurrence of any event specified in subsections (a) or (b) of this Section 8.01, the Lender shall use commercially reasonable efforts to deliver to the Borrower a certificate describing the expected occurrence of any such event specified in subsection (a) or (b) of this Section, 8.01 and the anticipated date upon which the Lender would make such demand upon the Borrower. Thereafter, a certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsections (a) or (b) of this Section 8.01 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof unless otherwise stated therein and unless all obligations due and owing under this Agreement are paid in full prior to the date on which any increased cost related to any event referred to in paragraphs (a) or (b) of this Section 8.01 are imposed upon the Lender or Participant; *provided* that subject to the following proviso, any increased costs in excess of the product of twenty basis points (0.20%) and the Commitment shall be paid by the Borrower to the Lender within ninety (90) days of the date the Lender makes demand therefor on the Borrower; *provided further* that to the extent a particular amount of increased costs in excess of the product of twenty basis points (0.20%) and the Commitment is expected to be an ongoing obligation of the Borrower (a "*Recurring Increased Cost*"), as determined by the Lender in a written notice from the Lender to the Borrower, then after the first payment of such Recurring Increased Costs pursuant to the immediately preceding provision, subsequent payments of such Recurring Increased Costs shall be due and payable within thirty (30) days of the date the Lender makes demand therefor.

(d) *Delay in Requests.* Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than ninety (90) days prior to the date that the Lender first notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 8.02. Net of Taxes, Etc.

(a) *Taxes.* Any and all payments to the Lender by the Borrower under any Basic Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been

made (including such deductions and withholdings applicable to additional sums payable under this Section 8.02) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. The foregoing obligation of the Borrower shall not apply to any payment to a Participant that is a non-U.S. person that would be subject to withholding under FATCA.

(b) *Indemnity.* To the extent permitted by law, the Borrower shall indemnify the Lender for the full amount of any Indemnified Taxes, whether or not such Indemnified Taxes were correctly or legally asserted; *provided* that the Borrower shall not be obligated to indemnify the Lender for any penalties, interest or expenses relating to Indemnified Taxes not asserted and incorrectly paid by the Lender or arising from the Lender's gross negligence or willful misconduct. The Lender agrees to give notice to the Borrower of the assertion of any claim against the Lender relating to such Indemnified Taxes as promptly as is practicable after being notified of such assertion; *provided* that the Lender's failure to notify the Borrower promptly of such assertion shall not relieve the Borrower of its obligation under this Section 8.02. Payments by the Borrower pursuant to this indemnification shall be made within thirty (30) days from the date the Lender makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Lender agrees to repay to the Borrower any refund (including that portion of any interest that was included as part of such refund and including any credit or deduction for such Indemnified Taxes against any other taxes payable by the Lender to any taxing jurisdiction in the United States) with respect to Indemnified Taxes paid by the Borrower pursuant to this Section 8.02 received by the Lender for Indemnified Taxes that were paid by the Borrower pursuant to this Section 8.02 promptly upon receipt of such refund. The Lender also agrees to contest, with the cooperation and at the expense of the Borrower, any such Indemnified Taxes which the Borrower reasonably believes not to have been properly assessed. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(c) *Payment of Other Taxes by the Borrower.* The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(d) *Notice.* As soon as practicable after the date of any payment of Taxes by the Borrower, the Borrower shall furnish to the Lender, the original or a certified copy of a receipt evidencing payment thereof.

(e) *Survival of Obligations.* The obligations of the Borrower and the Lender under this Section 8.02 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

Section 8.03. Break Funding Payments. (a) With respect to Loans that are not RFR Loans, in the event of (i) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the conversion of any Term Benchmark Loan

other than on the last day of the Interest Period applicable thereto or (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.04(a) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans) or (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.04(a) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section 8.03(b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 8.04. Survival. All of the Borrower's obligations under this Article VIII shall survive termination of the Commitment and repayment of all other obligations of the Borrower hereunder.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Notices. Except as otherwise specifically provided herein, all notices, requests and other communications hereunder shall be in electronic, telephonic or written form (including bank wire, telegram, telecopier or similar writing) and shall be given to the party to whom addressed, at its address or telephone or telecopier number set forth below, or such other address or telephone or telecopier number as such party may hereafter specify for the purpose by notice to the other parties. Each such notice, request or communication shall be effective (a) if given by telephone, when given to the number indicated below to a person which the transmitting party reasonably believes to be an authorized representative of the party to whom the notice is directed (which, in the case of the Borrower, shall be any Authorized Officer), (b) if given by telecopy or other electronic means, when such communication is transmitted to the appropriate address and the appropriate answerback is received, (c) if given by mail, five (5) days after such communication is deposited in the United States mail with first class postage prepaid, addressed as aforesaid or (d) if given by any other means, when delivered at the appropriate address; *provided* that notices to the Lender under Article II shall not be effective until received:

If to the Borrower, to:

San Diego Community Power
815 E Street, Unit 12716
San Diego, CA 92112
Attention: Eric W. Washington
E-mail: EWashington@sdcommunitypower.org

If to the Lender for Loans:

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: Allyson.l.goetschius@jpmorgan.com or
Janice.r.fong@jpmorgan.com

and

Attention: PFG Servicing
Telephone: (302) 634-4092
Email: PFG_Servicing@jpmorgan.com

with a copy to:

JPMorgan Loan Services
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 1
Newark, Delaware 19713-2107, United States
Attention: PFG Servicing
Telephone: (302) 634-4092
Email: PFG_Servicing@jpmorgan.com

All notices given by telephone, telecopier or other electronic means shall be confirmed by written notice mailed as promptly as practicable thereafter.

Section 9.02. No Waivers. No failure or delay by the Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.03. Expenses; Indemnification. (a) The Borrower shall pay (i) the reasonable fees of counsel for the Lender, as set forth in the Fee Agreement, in connection with the initial negotiation, preparation and execution of this Agreement and the other Basic Documents, (ii) the reasonable fees of counsel for the Lender in connection with any waiver or consent hereunder or any amendment hereof or any Potential Event of Default, alleged Potential Event of Default or Event of Default hereunder and (iii) if an Event of Default occurs, all out-of-pocket expenses incurred by the Lender, including the reasonable fees and disbursements of counsel, in connection with such Event of Default and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom.

(b) the Borrower hereby agrees to indemnify the Lender and hold the Lender harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Lender in connection with any investigative, administrative or judicial proceeding relating to or arising out of this Agreement or any other Basic Document or any actual or proposed use of proceeds of Loans hereunder (collectively “*Indemnified Costs*”); *provided* that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender’s willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction.

Section 9.04. Amendments and Waivers. Any provision of this Agreement or Note may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and the Lender.

Section 9.05. Successors and Assigns; Participations. (a) *Successors and Assigns.* This Agreement is binding on the Borrower’s and the Lender’s successors and assignees. The Borrower agrees that it may not assign this Agreement without the Lender’s prior consent. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably); *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) *Transferees.* The Borrower authorizes the Lender to disclose to any participant or assignee (each, a “*Transferee*”) and any prospective Transferee such financial and other information in the Lender’s possession concerning the Borrower which has been delivered to the Lender pursuant to this Agreement or which has been delivered to the Lender by the Borrower in connection with the Lender’s credit evaluation of the Borrower prior to entering into this Agreement.

(c) *Assignment to Federal Reserve.* The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any

payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

(d) *Participations.* Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a "Participant") a participation or participations in all or any part of the Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 7.01 hereof; and *provided, further*, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Article II hereof) will not in any event exceed that liability which the Borrower would owe to Lender but for such participation.

Section 9.06. Registers. (a) The Lender, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each assignment and assumption delivered to it and a register for the recordation of the names and addresses of the applicable Person, and the commitments of, and principal amounts (and stated interest) of the Loans owing to, each applicable Person pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive absent manifest error, and the Borrower and the Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and the Lender, at any reasonable time and from time to time upon reasonable prior notice.

(b) If the Lender shall sell a participation, it shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Basic Documents (the "*Participant Register*"); *provided* that the Lender shall have no obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Basic Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, JPMorgan Chase Bank, N.A. shall have no responsibility for maintaining a Participant Register other than in its capacity as the Lender.

Section 9.07. Counterparts; Integration. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding between the parties hereto and, except with respect to the other documents and agreements referred to herein, supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 9.08. Governing Law. This Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and enforced in accordance with, the laws of the State of California without giving effect to conflicts of laws provisions; *provided* that the obligations of the Lender hereunder shall be governed by the laws of the State of New York without giving effect to conflicts of laws provisions.

Section 9.09. Jurisdiction; Venue; Waiver of Jury Trial. (a) Each of the parties hereto hereby submits to the nonexclusive jurisdiction of any federal or state court of competent jurisdiction in the State and sitting in the County of Santa Clara for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement or any other Basic Document; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 9.01 hereof.

(b) With respect to any suit, action or proceeding relating to this Agreement, to the fullest extent permitted by applicable law, each party to this Agreement waives any right it may have to trial by jury. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

Section 9.10. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding, bankruptcy or insolvency or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

Section 9.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Basic Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery

hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Potential Event of Default at the time of any Credit Extension, and shall continue in full force until the Maturity Date.

Section 9.12. Severability. If any provision of this Agreement or the other Basic Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Basic Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.13. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, the Note), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the transactions described in this Agreement between the Lender and the Borrower are arm's-length commercial transactions between the Borrower, on the one hand, and the Lender, on the other hand, and (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; (b) (i) the Lender and its Affiliates each is and has been acting solely as a principal (*i.e.*, as a lender and not as a purchaser of securities within the meaning of the Securities Act of 1933 or the Securities and Exchange Act of 1934) and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (municipal, financial or otherwise), agent or fiduciary for the Borrower or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the Note; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower, hereby waives and releases any claims that it may have against the Lender or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 9.14. Electronic Execution of Certain Documents. Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an "*Ancillary Document*") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be

deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation between the Lender and the Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against the Lender and any of its Related Parties for any liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.15. USA Patriot Act. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower agrees to, promptly following a request by the Lender, provide all such other documentation and information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 9.16. Acknowledgement Regarding Any Supported QFCs. To the extent that the Basic Documents provide support, through a guarantee or otherwise, for or any agreement or

instrument that is a QFC (such support “*QFC Credit Support*” and each such QFC a “*Supported QFC*”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Basic Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “*Covered Party*”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Basic Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Basic Documents were governed by the laws of the United States or a state of the United States.

Section 9.17. No Recourse Against Constituent Members of SDCP. SDCP is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to the Joint Powers Agreement, and is a public entity separate from its constituent members. SDCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The Lender shall not make any claims, take any actions or assert any remedies against any of SDCP’s constituent members arising solely as a result of SDCP’s breach of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF NOTE

Not to exceed \$ _____

Dated Date: [Date]

FOR VALUE RECEIVED, the undersigned SAN DIEGO COMMUNITY POWER (the "*Borrower*"), hereby promises to pay to JPMORGAN CHASE BANK, N.A., or its registered assigns (the "*Lender*"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of all Reimbursement Obligations related to Letters of Credit and each Loan from time to time made by the Lender to the Borrower, in each case under that certain Revolving Credit Agreement, dated as of February 17, 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Agreement*"), between the Borrower and the Lender, in accordance with the terms of the Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Loan and Reimbursement Obligations from the date of such Loan or Honor Date, as applicable, until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Lender in Dollars in immediately available funds at the Lender's Lending Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

This Note is an obligation of the Borrower payable from and secured by a pledge of and a senior lien and charge upon Net Revenues. This Note is payable as to principal and interest thereof, exclusively from Net Revenues. This Note and the interest hereon are senior to all other debt incurred and payable from Net Revenues.

The Loans made by the Lender and Reimbursement Obligations shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and Reimbursement Obligations and payments with respect thereto.

The Lender, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

Delivery of an executed counterpart of a signature page of this Note by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Note.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Resolution duly adopted by the Borrower. The Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the Dated Date specified above.

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

LOANS AND PAYMENTS WITH RESPECT THERETO

[illegible]

EXHIBIT B

FORM OF BORROWING REQUEST

Date: _____, 20__

To: JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of February 17, 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”) (the terms defined therein being used herein as defined in the Agreement), between San Diego Community Power (the “*Borrower*”), and JPMorgan Chase Bank, N.A. (the “*Lender*”).

The undersigned hereby requests, pursuant to Section 2.01 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the “*Proposed Loan*”):

1. The Business Day of the Proposed Loan is _____ (the “*Issuance Date*”).
2. In the principal amount of \$_____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the Revolving Credit Exposure will not exceed the Commitment, as of the Issuance Date.
3. The Proposed Borrowing is a [Working Capital Loan] [Cash Collateral Loan and the Borrower has provided to the Lender on or prior to the Issuance Date reasonably detailed evidence of the underlying cash collateral requirement for which the Cash Collateral Loan is being used to satisfy.] [Reimbursement Loan, the proceeds of which will be used to repay Reimbursement Obligations with respect to Standby Letter of Credit No. _____, issued under the LC Exposure on _____, 20__].
4. [The duration of the Interest Period for each Term Benchmark Loan made as part of the Proposed Loan, if applicable, is ____ month[s] (which shall be 1, 3 or 6 months).][The Proposed Loan is an ABR Loan.]²

² Reimbursement Loans must be ABR Loans.

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, in each case, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Potential Event of Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited **[in the amount of \$_____]** to or on behalf of the Borrower in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (*e.g.*, “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF NOTICE OF LOAN PREPAYMENT

TO: JPMorgan Chase Bank, N.A., as lender (the “*Lender*”)

RE: Revolving Credit Agreement, dated as of February 17, 2023, by and between San Diego Community Power (the “*Borrower*”) and the Lender (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “*Credit Agreement*”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

the Borrower hereby notifies the Lender that on _____³ pursuant to the terms of Section 2.04 (Prepayments) of the Credit Agreement, the Borrower intends to optionally prepay the Loan in the following amount(s): \$ _____⁴

³ Specify date of such prepayment.

⁴ Any prepayment shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF LETTER OF CREDIT REQUEST

Date: _____, 20__

To: JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of February 17, 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”) (the terms defined therein being used herein as defined in the Agreement), between San Diego Community Power (the “*Borrower*”), and JPMorgan Chase Bank, N.A. (the “*Lender*”) and hereby requests, pursuant to Section 2.03 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the “*Proposed Letter of Credit*”):

1. The Business Day of the Proposed Letter of Credit is _____, 20__ (the “*Issuance Date*”).

2. The principal amount of the Proposed Letter of Credit is \$ _____. After giving effect to the issuance of the Proposed Letter of Credit, the Revolving Credit Exposure will not exceed the Commitment as of the Issuance Date.

3 The Proposed Letter of Credit is to be issued under the LC Exposure.

4. The tenor of the Proposed Letter of Credit shall be [].

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the Borrower set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Potential Event of Default or Event of Default has occurred and is continuing.

6. The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application in the form attached hereto as Annex I (or any successor form provided by the Lender to the Borrower and the Lender).

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., "*pdf*" or "*tif*") shall be effective as delivery of a manually executed counterpart of this notice.

SAN DIEGO COMMUNITY POWER

By: _____
Name: _____
Title: _____

ANNEX I

FORM OF STANDBY LETTER OF CREDIT APPLICATION

[TO COME FROM LENDER]

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

[____], 20[__]

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, N.A. (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of February 17, 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”), by and between San Diego Community Power (the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

This Compliance Certificate is being delivered in connection with **[annual audited financials for the Fiscal Year ended _____, 20__]****[unaudited financial statements for the fiscal quarter ended _____, 20__]**.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Officer of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Potential Event of Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below;
4. The financial statements required by Section [5.01(b)]/[5.01(c)] of the Agreement and being furnished to you concurrently with this certificate fairly represent the financial condition of the System Debt in accordance with GAAP as of the dates and for the periods covered thereby; and
5. The Borrower is in compliance with Section 5.11 of the Agreement on the date hereof, as evidenced by the Debt Service Coverage Ratio and Days Liquidity on Hand calculations set forth on Schedule 1 hereto.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

_____]

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered as of the date first above written.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

**SCHEDULE 1
TO
COMPLIANCE CERTIFICATE
DEBT SERVICE COVERAGE RATIO NOTICE**

Debt Service Coverage (Section 5.11)

4-QUARTERS

 / /

A. NET REVENUES:

\$ _____

B. ANNUAL DEBT SERVICE:

\$ _____

C. ROW A DIVIDED BY ROW B, EXPRESSED AS RATIO

IS THE RATIO IN ROW C GREATER THAN OR EQUAL TO 1.10?

Y/N

Days Liquidity on Hand (Section 5.11(a))

4-QUARTERS

 / /

A: CASH AND CASH EQUIVALENTS:

\$ _____

B: REVOLVING CREDIT AVAILABILITY:

\$ _____

C. ROW A PLUS ROW B:

\$ _____

D. OPERATION AND MAINTENANCE EXPENSES

\$ _____

E. INTEREST EXPENSE

\$ _____

F. ROW D PLUS ROW E:

\$ _____

G. ROW F MULTIPLIED BY 1/365:

\$ _____

H. ROW C DIVIDED BY ROW G (DAYS LIQUIDITY ON HAND):

_____ Days

ARE THE DAYS IN ROW G GREATER THAN OR EQUAL TO 90?

Y/N