



# REGULAR MEETING of the Finance Committee of the Clean Power Alliance of Southern California

Wednesday, June 22, 2022

11:00 a.m.

**SPECIAL NOTICE:** Pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, and enacting Resolutions, and as a response to mitigating the spread of COVID19, the Finance Committee will conduct this meeting remotely.

[Click here to view a Live Stream of the Meeting on YouTube](#)

If the YouTube stream is not working, please use the zoom link.

\*There may be a streaming delay of up to 60 seconds. This is a view-only live stream.

**To Listen to the Meeting:**

<https://us06web.zoom.us/j/87015901096>

or

Dial: (720) 707-2699 Meeting ID: 870 1590 1096

**PUBLIC COMMENT:** Members of the public may submit their comments by one of the following options:

- **Email Public Comment:** Members of the public are encouraged to submit written comments on any agenda item to [clerk@cleanpoweralliance.org](mailto:clerk@cleanpoweralliance.org) up to four hours before the meeting. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.
- **Provide Public Comment During the Meeting:** Please notify staff via email at [clerk@cleanpoweralliance.org](mailto:clerk@cleanpoweralliance.org) at the beginning of the meeting but no later than immediately before the agenda item is called.
  - You will be asked for your name and phone number (or other identifying information) and agenda item similar to filling out a speaker card so that you can be called on when it is your turn to speak.
  - You will be called upon during the comment section for the agenda item on which you wish to speak on. When it is your turn to speak, a staff member will unmute your phone or computer audio.
  - You will be able to speak to the Committee for the allotted amount of time. Please be advised that all public comments must otherwise comply with our Public Comment Policy.
  - Once you have spoken, or the allotted time has run out, you will be muted during the meeting.

If preferred, you may also submit written comments during the meeting via email to: [clerk@cleanpoweralliance.org](mailto:clerk@cleanpoweralliance.org). The written comments will be shared with the Committee.

\*While downloading the Zoom application may provide a better meeting experience, Zoom does not need to be installed on your computer to participate. After clicking the webinar link above, click "start from your browser."

Clean Power Alliance Finance Committee  
June 22, 2022

*Meetings are accessible to persons with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least two (2) working days before the meeting at [clerk@cleanpoweralliance.org](mailto:clerk@cleanpoweralliance.org) or (323) 640-7664. Notification in advance of the meeting will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.*

**PUBLIC COMMENT POLICY:** *The General Public Comment item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today's agenda. Public comments on matters on today's Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. Members of the public who wish to address the Board are requested to contact the Board Clerk, as specified above, at the beginning of the meeting but no later than immediately prior to the time an agenda item is called. Each speaker is limited to two (2) minutes (in whole minute increments) per agenda item with a cumulative total of five (5) minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to [Policy No. 8 – Public Comment](#) for additional information.*

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## **CALL TO ORDER & ROLL CALL**

### **GENERAL PUBLIC COMMENT**

### **CONSENT AGENDA**

1. Approve Minutes from the May 25, 2022 Finance Committee Meeting
2. Receive and File May 2022 Risk Management Team Report
3. Receive and File May 2022 CPA Investment Report
4. Receive and File April Financial Dashboard

### **REGULAR AGENDA**

5. Report from the Chief Financial Officer
6. Recommend Selection of California Community Choice Financing Authority as Bond Issuer and Goldman Sachs as Prepaid Supplier for an Energy Prepayment Transaction to the Board of Directors

### **COMMITTEE MEMBER COMMENTS**

### **ADJOURN – NEXT MEETING JULY 27, 2022**

**Public Records:** *Public records that relate to any item on the open session agenda for a Committee Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Committee. Public records are available for inspection online at [www.cleanpoweralliance.org/agendas](http://www.cleanpoweralliance.org/agendas).*

**MINUTES**

REGULAR MEETING of the Finance Committee of the  
Clean Power Alliance of Southern California  
Wednesday, May 25, 2022, 11:00 a.m.

*Pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, and enacting Resolutions, and as a response to mitigating the spread of COVID19, the Finance Committee conducted this meeting remotely.*

**CALL TO ORDER & ROLL CALL**

Committee Chair Julian Gold called the meeting to order at 11:00 a.m. and Raynette Tom, Clerk, conducted roll call.

<b>Roll Call</b>			
<b>Beverly Hills</b>	Julian Gold	Committee Chair	Remote
<b>Camarillo</b>	Susan Santangelo	Committee Member	Remote
<b>Carson</b>	Reata Kulcsar	Committee Member	Absent
<b>Rolling Hills Estates</b>	Steve Zuckerman	Committee Member	Remote
<b>Santa Monica</b>	Pam O'Connor	Committee Member	Absent

All votes are unanimous unless otherwise stated.

**GENERAL PUBLIC COMMENT**

There was no public comment.

**CONSENT AGENDA**

1. Approve Minutes from the April 27, 2022 Finance Committee Meeting
2. Receive and File April 2022 Risk Management Team Report
3. Receive and File April 2022 CPA Investment Report
4. Receive and File Fiscal Year Q3 Financial Report
5. Approve Continuation of Baker Tilly as the Independent Financial Auditor for CPA's Fiscal Year 2021/2022 Financial Statements and Required Single Audit of California Arrearage Payment Program (CAPP) Funds

**Motion:** Committee Member Zuckerman, Rolling Hills Estates

**Second:** Committee Member Santangelo, Camarillo

**Vote:** The consent agenda was approved by a roll call vote with abstention from Item 1 by Committee Member Santangelo.

**REGULAR AGENDA**

6. Report from the Chief Financial Officer  
David McNeil, Chief Financial Officer, provided an oral update on CPA's treasury operations and financial performance. Mr. McNeil noted that CPA's contributions to the

net position for the first nine months of 2022 were \$31 million with an anticipated additional contribution of \$30 million in the fourth quarter ending June 30. The second and last installment of the L.A. County loan is due June 30. Mr. McNeil indicated CPA is tracking higher than budget for the bad debt expense for the current fiscal year however adjustments will be made at the year-end to reflect a second round of California Arrearage Payment Plan (CAPP) funding expected later this year. In response to Chair Gold's questions, Mr. McNeil noted it is unknown what percentage of CAPP 2 funding will be applied to commercial and/or residential customers, adding that CPA's percentage of bad debt is mostly driven by residential customers. Mr. McNeil highlighted CPA's obligation, as implemented by the California Public Utilities Commission (CPUC) to post a Financial Security Requirement (FSR). The current FSR calculation is \$97 million, and staff is in discussions with SCE and the CPUC concerning the FSR amount and is planning for the worst-case scenario, including discussions with JPMorgan about an increase in the line of credit and discussions with AON insurance company about surety bond(s) providing a \$97 million financial instrument to meet the FSR. In response to Committee Member Zuckerman's questions, staff indicated that AON advised against a joint CCA approach to the FSR and that prepay financing transactions are not connected to the FSR requirement.

7. Recommend Approval of Proposed Fiscal Year 2022/2023 Budget to the Board of Directors

David McNeil, CFO, provided a presentation on the proposed FY 2022/23 budget. Mr. McNeil reviewed a timeline of the budget process, explained budget key takeaways and highlighted operating expenses and select CCA metrics and comparisons. Mr. McNeil noted that the occupancy expenses fell to zero as a result a change accounting treatment promulgated by the Government Accounting Standards Board. FY 2022/23 rent expenses are budgeted under interest expense and G&A. CPA projects a \$197.9 million increase to the net position in FY 2022/23, increasing the budgeted net position to \$301.9 million by the end of the fiscal year. Mr. McNeil identified CPA's reserve policy targets, highlighting the goal of securing 120 days liquidity on hand. Regarding Chair Gold's question concerning other alternatives to meeting the FSR, Mr. McNeil commented that staff would like to get feedback from J.P. Morgan and AON.

**Motion:** Committee Member Zuckerman, Rolling Hills Estates  
**Second:** Committee Member Santangelo, Camarillo  
**Vote:** Item 7 was approved by a roll call vote.

**COMMITTEE MEMBER COMMENTS**

The Committee welcomed new member, Director Santangelo, Camarillo.

**ADJOURN**

Committee Chair Gold adjourned the meeting at 11:50 a.m.



## Staff Report – Agenda Item 2

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**To:** Clean Power Alliance (CPA) Finance Committee  
**From:** Geoff Ihle, Director of Market Risk  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** May 2022 Risk Management Team Report  
**Date:** June 22, 2022

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### **May 2022 RMT REPORT**

#### **Key Actions**

- Discussed April 2022 market performance.
- Reviewed the April 26, 2022 revised load forecast.
- Reviewed energy positions and impacts on position of revised load forecast and approved 2022-2025 hedges.
- Reviewed positions for RPS and carbon free.
- Reviewed Resource Adequacy positions; approved a solicitation for August 2022 and August 2023 System RA, and approved the recommended bid into the BPA 2023 RA RFO.

#### **Policy Compliance**

There were no policy deviations reported for April 2022.

#### **ATTACHMENT**

None.



### Staff Report – Agenda Item 3

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**To:** Clean Power Alliance (CPA) Finance Committee  
**From:** David McNeil, Chief Financial Officer  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** CPA Investment Report  
**Date:** June 22, 2022

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#### **RECOMMENDATION**

Receive and File.

#### **ATTACHMENT**

1. May 2022 Investment Report

**Clean Power Alliance  
Investment Report  
May 2022**

**Fund Name:** Local Agency Investment Fund

Beginning Balance	15,709
Interest Paid (1)	-
Deposits	
Withdrawals	-
Ending Balance	15,709
Interest Earned (2)	9
Average Monthly Effective Yield	0.684%

1. Interest is paid quarterly effective 15 days following the end of the quarter

2. Interest earned is based on daily compounding, account balances and monthly effective yield published by LAIF



## Staff Report – Agenda Item 4

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**To:** Clean Power Alliance (CPA) Finance Committee  
**From:** David McNeil, Chief Financial Officer  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** Financial Dashboard  
**Date:** June 22, 2022

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### **RECOMMENDATION**

Receive and file.

### **ATTACHMENT**

1. April Financial Dashboard

### Financial Dashboard

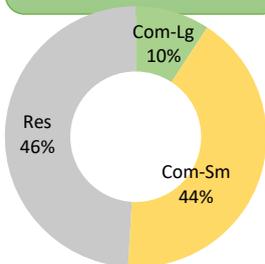
YTD  
April  
2022

Active Accounts  
998,954

Participation Rate  
95.83%

YTD Sales Volume  
9,520 GWh

April Sales Volume  
836 GWh



#### Summary of Financial Results

in \$000,000's	April				Year-to-Date			
	Actual	Budget	Var	%	Actual	Budget	Var	%
Energy Revenues	53.9	60.5	6.5	-11%	710.8	747.0	36.1	-5%
Cost of Energy	50.8	42.5	-8.3	20%	655.6	725.6	70.0	-10%
Net Energy Revenue	3.1	18.0	14.8	-83%	55.2	21.3	-33.8	
Operating Expenses	2.4	2.6	0.2	13%	23.0	27.1	4.2	-15%
Net Operating Income	0.7	15.4	14.6	95%	32.2	-5.8	-38.0	

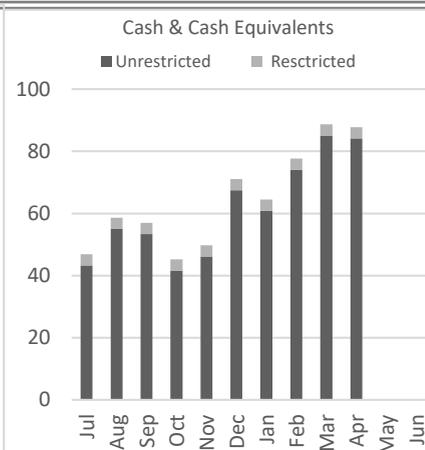
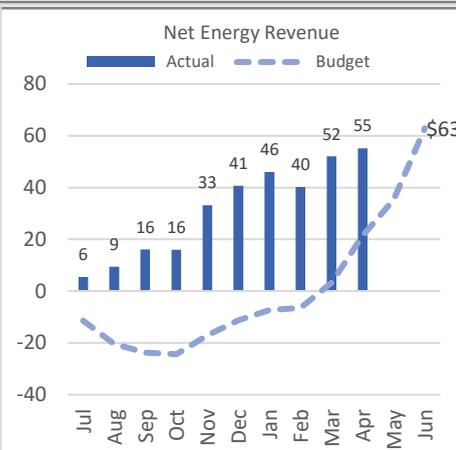
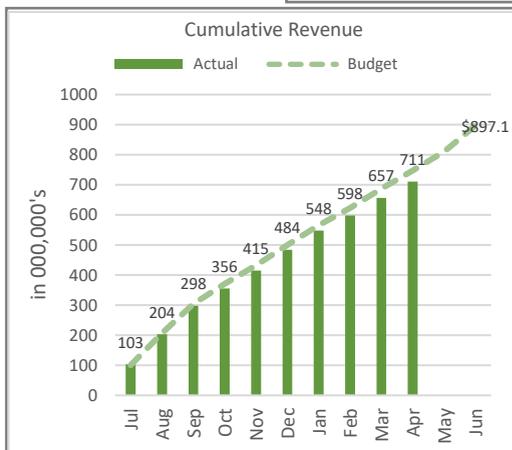
**Note:** Numbers may not sum up due to rounding.

CPA recorded operating income of \$792,000 in Apr 2022 which was \$14.6 million less than the budgeted operating income of \$15.4 million. For the year to date, CPA recorded operating income of \$32.2 million, \$38 million more than the budgeted, year-to-date operating loss of \$5.8 million.

Revenue was \$6.5 million or 11% lower than budgeted in April primarily due to the reversal of prior month charges by SCE. CPA is working with SCE to determine the cause of the reversal of prior month charges. The cost of energy was \$50.8 million or 20% higher than budgeted primarily as a result of higher energy market prices arising from events in the Ukraine, drought conditions in the west which have reduced hydroelectric production and by a heat event in April 2022 which caused CPA to serve higher energy consumption by CPA customers at elevated spot market prices. For the year to date, operating costs were lower than budgeted operating costs primarily because of lower staffing costs resulting from delayed hiring and staff turnover, the performance of services later in the year than budgeted, and the non-utilization of contingencies.

As of April 30, 2022, CPA had \$84.2 million in unrestricted cash and cash equivalents, and \$79.853 million available on its bank line of credit. CPA has a \$20 million loan outstanding due for repayment in June 2022.

CPA is in sound financial health and compliance with its bank and other credit covenants



**Definitions:**

Accounts: Active Accounts represent customer accounts of active customers served by CPA per Calpine Invoice.

Participation Rate %: Participation Rate represent active accounts divided by eligible CPA accounts

YTD Sales Volume: Year to date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers

Revenues: Retail energy sales less allowance for doubtful accounts

Cost of energy: Cost of energy includes direct costs incurred to serve CPA's load

Operating expenses: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations

Net operating income, also known as earnings before interest, depreciation and amortization (EBIDA), represents the difference between revenues and expenditures before depreciation expense, interest income and expense, and capital expenditures

Cash and Cash Equivalents: Includes cash held as bank deposits.

Year to date (YTD): Represents the fiscal period beginning July 1, 2021



## Staff Report – Agenda Item 5

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**To:** Clean Power Alliance (CPA) Finance Committee  
**From:** David McNeil, Chief Financial Officer  
**Subject:** Report from the Chief Financial Officer  
**Date:** June 22, 2022

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The Chief Financial Officer will provide a verbal update on financial performance, treasury operations and CPA's Financial Security Requirement for the July – December 2022 period.



## Staff Report – Agenda Item 6

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**To:** Clean Power Alliance (CPA) Finance Committee

**From:** David McNeal, Chief Financial Officer  
Kate Freeman, Financial Strategy & Initiatives Manager

**Approved by:** Ted Bardacke, Chief Executive Officer

**Subject:** Selection of Bond Issuer and Prepaid Supplier for Energy Prepayment Transaction

**Date:** June 22, 2022

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### **RECOMMENDATION**

Recommend selection of California Community Choice Financing Authority (CCCFA) as Bond Issuer and Goldman Sachs as Prepaid Supplier for an Energy Prepayment Transaction to the Board of Directors.

### **ATTACHMENTS**

1. PowerPoint Presentation
2. CCCFA Joint Powers Authority Agreement



# Item 6: Selection of Bond Issuer and Prepaid Supplier for Energy Prepayment Transaction

June 22, 2022



- **Recommendation:** Recommend selection of **California Community Choice Financing Authority** as Bond Issuer and **Goldman Sachs** as Prepaid Supplier for an Energy Prepayment Transaction to the Board of Directors at its July 7, 2022 Board Meeting

# Summary

- In Q2 2021 CPA conducted competitive solicitations to select a Bond Issuer and a Prepaid Supplier for an energy prepayment financing.
- Municipal Capital Markets (MCM), CPA's municipal financial advisor, and Chapman & Cutler (C&C), CPA's Prepay Counsel, supported these solicitations and provided expert feedback to assist in candidate evaluation and selection.
- Staff is recommending the selection of California Community Choice Financing Authority (CCCFA) as the Bond Issuer for an energy prepayment financing.
- Staff is recommending the selection of Goldman Sachs / J. Aron as the Prepaid Supplier for its first energy prepayment transaction.

# Background

- Prepays are well-established financing mechanisms that allow municipal utilities and CCAs to leverage their status as issuers of tax-exempt debt to reduce energy costs.
- Staff introduced clean energy prepayment financings to the Executive and Finance Committees in October 2021 and March 2022
- On April 7, 2022 Staff presented an introduction to prepay energy financings to the Board of Directors and proposed that the Board select a Bond Issuer and Prepaid Supplier at its July 7, 2022 meeting.
- On May 11, 2022 the Board approved contracts with MCM and C&C to assist CPA with evaluating potential Bond Issuers and Prepay Suppliers and assist with the structuring and eventual closing of a prepay transaction.

# Selection of Bond Issuer

- A Request For Information (RFI) was issued in April 2022 to identify qualified parties to fill the role of Bond Issuer for an energy prepayment transaction. The Bond Issuer's role includes:
  - Issuing the prepay bond; using the bond proceeds to pay the Prepaid Supplier in exchange for a long-term supply of energy
  - Delivering energy to CPA in exchange for monthly energy payments
  - Paying Bond Investors
- Three entities responded to the RFI; one respondent subsequently withdrew its indication of interest. Staff and MCM conducted interviews with the two respondent firms, identifying CCCFA as its preferred selection.
- CCCFA was the Bond Issuer on the two prepay transactions completed by CCAs in Fall 2021 and offers CPA a low-cost, proven vehicle for issuing a prepay bond.
- CCCFA's current membership consists of four northern California CCAs (MCE, East Bay Clean Energy, Silicon Valley Clean Energy and 3CE), each a Founding Member of the JPA.



# CCCFA Overview

- CCCFA was founded in 2021 for the purpose of assisting members in financing or refinancing energy prepayments. It fulfills this purpose by issuing bonds to finance prepay transactions on behalf of its members.
- CCCFA is governed by a Board consisting of one Director representing each Founding Member. Associate Members are not represented on the Board.
  - Each Founding Member has one vote in matters before the Board, with a majority vote sufficient to take action on most items
  - A 2/3 majority vote is required to add additional Founding Members, terminate a member, terminate the JPA, or amend specific portions of the JPA
- CCCFA adopts an annual budget covering operating expenses, which are allocated equally to each member. The JPA makes the following provisions to limit member liability:
  - Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Any bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA.
  - The costs and expenses of each prepay transaction, including administrative costs of CCCFA relating to the prepay transaction, shall be allocated solely to the Member(s) participating in such prepay transaction. CPA would not be liable for any other Member's prepay related obligations.

# Selection of Bond Issuer: Next Steps + CCCFA

- Responding to input from Executive Committee, staff propose to join CCCFA as a Founding Member which would provide CPA with a seat on the CCCFA Board of Directors. This would require CPA to:
  - Execute the CCCFA Joint Powers Agreement (see attachment 1). Adopt a Resolution of CPA's Board authorizing the same.
  - Request to be added to the JPA as a Founding Member and receive approval of at least 2/3 of the CCCFA Board.
  - Agree to pay a one-time \$50,000 membership fee and CPA's share of the CCCFA's annual operating costs estimated at \$20,000.
- Either CPA's CEO or their designee would be CPA's representative on the CCCFA Board
  - Current members of the CCCFA Board include three CEOs and one Director of Finance

# Selection of Prepaid Supplier

- A Request for Proposal (RFP) was issued to identify qualified parties to serve as Prepaid Supplier for an energy prepayment transaction. The Prepaid Supplier's role includes:
  - Assuming CPA's obligations as a "buyer" on the assigned PPAs; receiving energy from the PPA supplier and delivering energy to the Bond Issuer which flows through to CPA
  - Receiving a lump sum prepayment from the Bond Issuer for long-term energy supply
  - Making a payment that is sufficient, together with other available proceeds, to retire the prepay bonds upon a termination of the prepaid contract and to make payments for any electricity that is not delivered
- CPA received four responses to its RFP
- Staff recommend Goldman Sachs and its subsidiary J. Aron as its preferred Prepaid Supplier. This selection was based on the following strengths:
  - A high level of expected savings to CPA
  - A deep and experienced team (14 prepays in recent years, including the CCCFA/MCE prepay transaction completed last fall)
  - Demonstration of preparedness that will allow CPA to meet our planned issuance timeline (Q4 2022)
  - A Special Purpose Vehicle (SPV) structure that provides transparency and market level savings for the initial period of the prepay as well as at each subsequent interest rate reset which is estimated to occur each 5 to 10 years over the bond term



# Fiscal Impacts

## Prepaid Supplier (Goldman Sachs)

- Fees charged by Goldman Sachs will be paid from bond proceeds
- Selection of prepaid supplier has no direct fiscal impact on CPA

## Bond Issuer (CCCFA)

- One time, \$50,000 joining fee
- CPA's share of annual operating expenses estimated to be approximately \$20,000
- There are no exit fees associated with withdrawing from CCCFA; a withdrawal would not impact CPA's obligations under an outstanding prepay transaction



# Prepayment Transaction Timeline: Board & Committees

## July 2022

- Board (July 7)
  - Present Resolution to join Bond Issuer CCCFA
  - Present Recommendation to Select Goldman Sachs as Prepaid Supplier

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## September 2022

- Prepay Update to Executive Committee (September 21)
- Prepay Update to Finance Committee (September 28)
- Activities: Preparation of documents and resolutions

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## October 2022

- Board (October 6)
  - Presentation of prepay transaction documents
  - Present Resolution to authorize closing of a prepay transaction subject to meeting or exceeding a defined level savings on PPA costs

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## Oct – Dec 2022

- Transaction close

- **Recommendation:** Recommend selection of **California Community Choice Financing Authority** as Bond Issuer and **Goldman Sachs** as Prepaid Supplier for an Energy Prepayment Transaction to the Board of Directors at its July 7, 2022 Board Meeting

# Questions



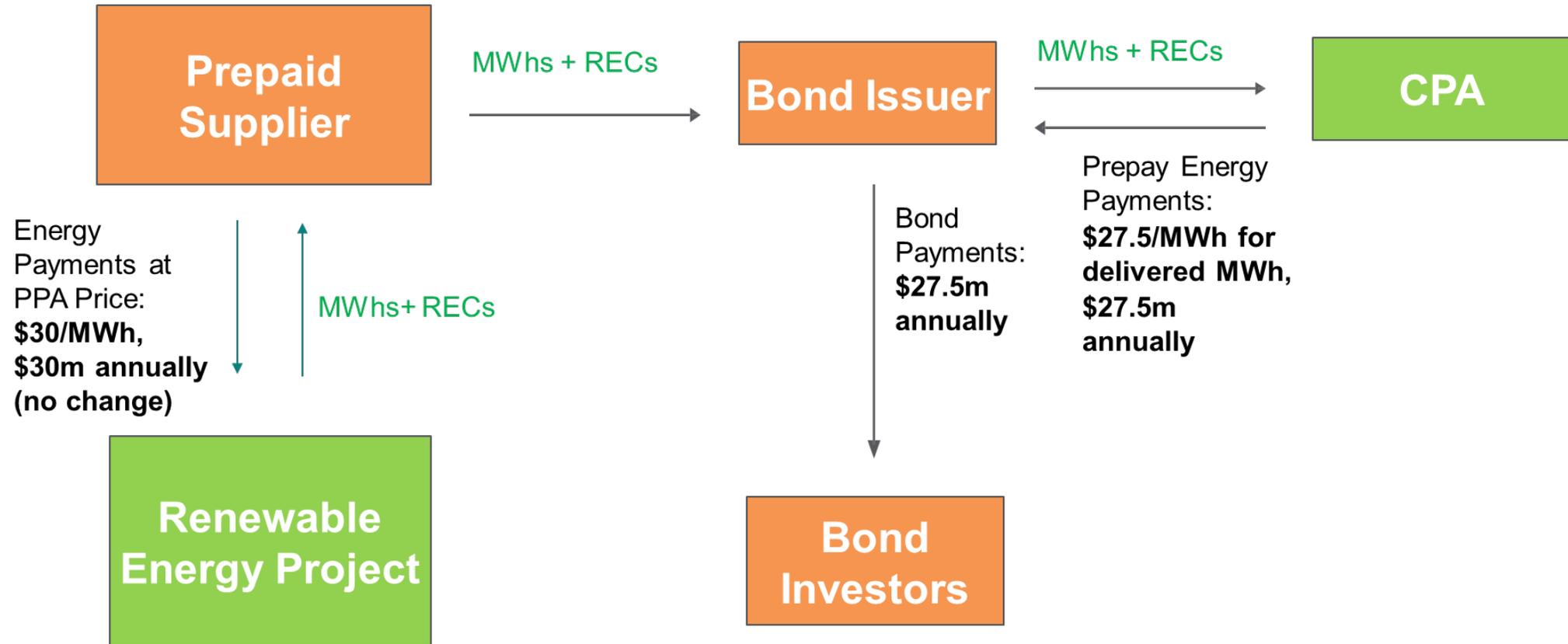
# Risks and Benefits Overview

- **Prepays benefits:**
  - An initial prepay transaction is expected to save CPA approximately \$2-3 million per year on its Power Purchase Agreement (PPA) costs, in-line with savings achieved by other CCAs. Additional transactions have the potential to add further savings.
  - Provide a source of savings that can contribute to reserves, lower rates and/or fund customer programs
- **Prepay risks:**
  - The primary risk to CPA is that the prepay program terminates earlier than expected and CPA does not realize expected energy cost savings
  - If the prepay transaction terminates before bond maturity date:
    - The PPA supporting the prepay transaction returns to status quo; CPA re-assumes buyer obligations and pays the PPA price as it does currently.
    - CPA is not responsible for bond repayment.



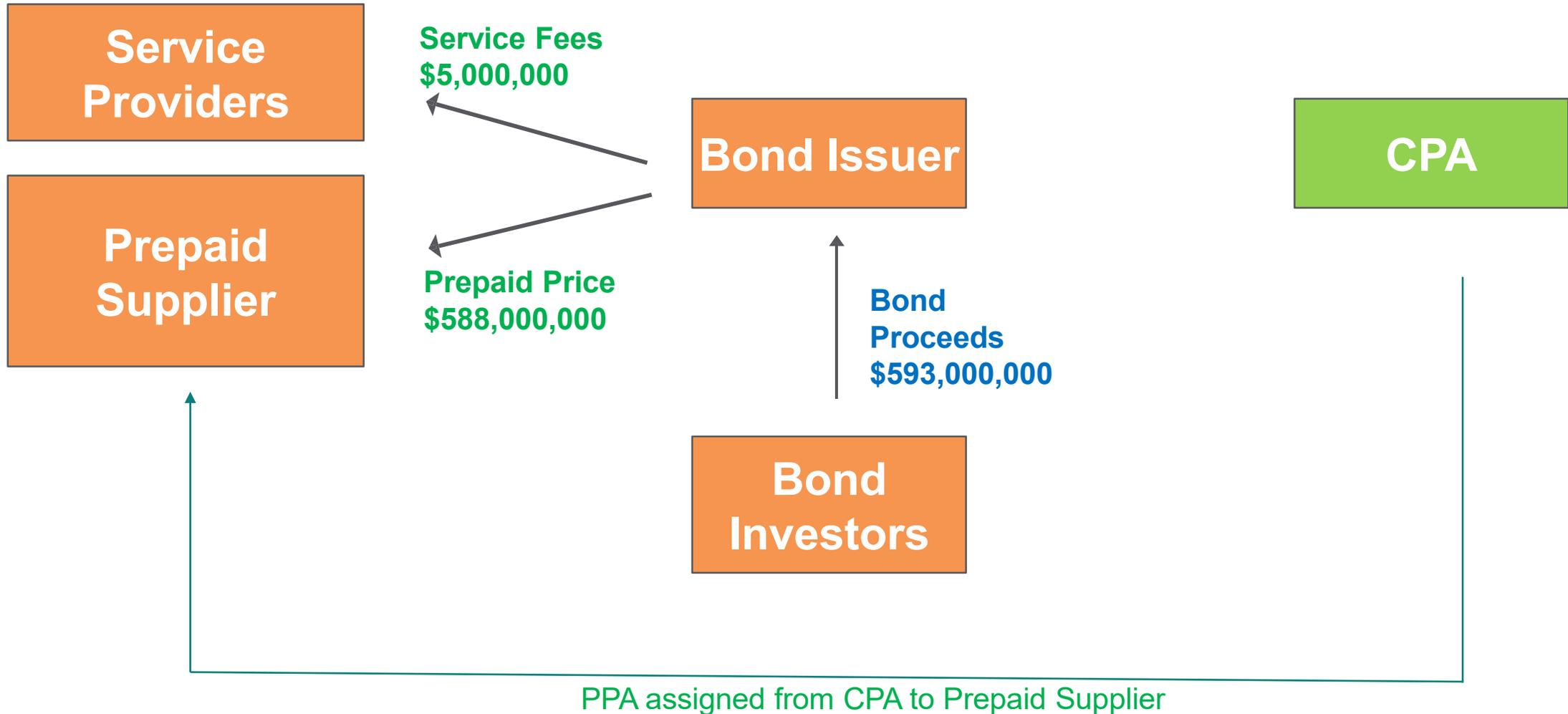
# Example Prepay Transaction Flowchart

(Monthly Cash and Electricity Flow)



# Example Prepay Transaction Flowchart

(At Bond Issuance / Closing)



# Prepay Transaction – Key Concepts

## Prepay Bond Issuance and Proceeds

- Prepay transactions involve the sale of tax-exempt bonds to Bond Investors by a Bond Issuer. The prepay bond is exempt from federal taxation and from State income taxation for Bond Investors domiciled in California.
- The Bond Issuer uses the bond proceeds to prepay the Prepaid Supplier, usually a financial institution or other investment grade credit-rated entity, for a long-term supply of electricity pursuant to a contract between the Bond Issuer and the Prepaid Supplier
- The Prepaid Supplier:
  - Is obligated to make a payment that is sufficient, together with other available proceeds, to retire the prepay bonds upon a termination of the prepaid contract and to make payments for any electricity that is not delivered, and
  - The Bond Issuer's bonds receive the same credit rating as that of the Prepaid Supplier
- CPA does not issue a bond and bond proceeds do not flow to CPA or to the renewable energy project developers or project owners. CPA has no obligation to repay the bonds.



# Renewable Energy Prepayment – Key Concepts

## Source of CPA Savings

- In a prepay transaction, a Prepaid Supplier accepts an obligation to make regular PPA payments to the energy project owner and supply energy to the Bond Issuer in exchange for a single lump sum prepayment amount (“prepay price”)
- The “prepay price” is equal to the present value of PPA payments over the prepay bond term discounted at a taxable interest rate approximating what the Prepay Supplier pays to borrow funds
- The Bond Issuer sells prepay bonds to Bond Investors and receives bond proceeds that are required to fund the sum of the “prepaid price” and issuing expenses. Bond Issuer remits the “prepaid price” to the Prepaid Supplier and remits issuing expenses to service providers
- The prepay bonds are amortized over the 30-year term of the transaction and the resulting principal and interest payments (“P&I payments”) are paid by the Bond Issuer to the Bond Investors.
- The Bond Issuer sells CPA the energy each month and CPA pays the Bond Issuer an energy payment sufficient to make P&I payments. The Bond Issuer uses CPA’s payments, and any amounts due from the Prepaid Supplier in lieu of failed deliveries, to make P&I payments to the Bond Investors.
- CPA’s energy payment to the Bond Issuer is lower than the PPA payment due to the energy project owner, resulting in an energy cost savings to CPA



# Renewable Energy Prepayment – Key Concepts

## Assignment of an Existing PPA and new Energy Supply Agreements

- In a prepayment transaction, CPA assigns certain rights and obligations, including title and ownership of the renewable energy, under an existing PPA to the Prepaid Supplier
- The renewable energy project owner now delivers energy to the Prepaid Supplier and the Prepaid Supplier assumes responsibilities of the “energy buyer” under the terms of the PPA
- As noted in the previous slide the Prepaid Supplier sells energy to the Bond Issuer under a long-term supply agreement. CPA enters into a separate energy supply agreement with the Bond Issuer under which CPA continues to receive energy and renewable attributes from the renewable energy project (no change from current situation) and make energy payments (less a discount) to the Bond Issuer.
- Title to the renewable energy passes instantaneously from PPA Seller to Prepaid Supplier to Bond Issuer to CPA at the energy delivery point



## **CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT**

This Joint Powers Agreement (this “Agreement”) is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to herein as the “Members” and those parties initially executing this Agreement are referred to as the “Founding Members”), creating a separate joint powers agency, which is named “California Community Choice Financing Authority” (“CCCFA”).

### **WITNESSETH**

WHEREAS, each Member is a “community choice aggregator,” as that term is defined in Section 331.1 of the Public Utilities Code of the State of California (the “Public Utilities Code”), having duly adopted, established and implemented a community choice aggregation program pursuant to Section 366.2 of the Public Utilities Code, with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs; and

WHEREAS, each Member is a “public agency,” as that term is defined in Section 6500 of the Government Code of the State of California (the “Government Code”); and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, being Section 6500 and following (the “Act”), authorizes a joint exercise by two or more public agencies of any power which is common to each of them and the creation of an entity that is separate from the parties to the joint exercise of powers agreement; and

WHEREAS, it is to the mutual benefit of the Members and in the public interest that an agency by the name of the California Community Choice Financing Authority be created, by which the Members jointly exercise for their common benefit and for the purposes specified herein certain powers that they have in common or are otherwise provided for by applicable law, including but not limited to (i) the acquisition and operation of power supplies, resource adequacy and renewable attributes, and (ii) the provision of other energy services or programs which may be of benefit to one or more Members; and

WHEREAS, the Act conveys upon joint exercise of powers authorities certain additional powers, including but not limited to the power to issue revenue bonds and incur other evidences of indebtedness for such purposes as are specified in the Act; and

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

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

## Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

**Section 1.01** “**Act**” means Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 *et seq.*), as supplemented and amended from time to time, including without limitation the Marks-Roos Local Bond Pooling Act of 1985.

**Section 1.02** “**Agreement**” means this Joint Powers Agreement, as it may be supplemented and amended from time to time in accordance with the terms hereof.

**Section 1.03** “**Associate Member**” means any Public CCA Agency that is a signatory to this Agreement and that has met the requirements of Section 3.02 below to become an Associate Member. The term “Associate Member” shall, however, exclude any Associate Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below.

**Section 1.04** “**Board**” means the Board of Directors of CCCFA as established by this Agreement.

**Section 1.05** “**Bonds**” means bonds, notes, commercial paper, installment purchase, lease purchase and similar agreements and certificates of participation therein, and any other evidences of indebtedness.

**Section 1.06** “**CCCFA**” means the California Community Choice Financing Authority, the Joint Powers Authority established by this Agreement.

**Section 1.07** “**Director**” means each Director duly appointed and serving on the Board as provided in Article IV of this Agreement.

**Section 1.08** “**Founding Member**” means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term “Founding Member” shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

**Section 1.09** “**Government Code**” means the Government Code of the State of California.

**Section 1.10** “**Member**” means a Founding Member or an Associate Member.

**Section 1.11** “**Prepayment Project**” means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA’s approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

**Section 1.12** “**Prepayment Project Contract**” means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

**Section 1.13 “Public CCA Agency”** means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

**Section 1.14 “Public Utilities Code”** means the Public Utilities Code of the State of California.

## **Article II. FORMATION OF AUTHORITY**

**Section 2.01 Creation of CCCFA.** Pursuant to the Act, there is hereby created a public entity, to be known as the “California Community Choice Financing Authority,” which shall be a public entity separate and apart from its Members. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.

**Section 2.02 Purpose.** This Agreement is made, and CCCFA is being established, pursuant to the Act to provide for the joint exercise of powers common to the parties hereto to assist the Members in financing or refinancing energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members, including by undertaking, financing or refinancing Prepayment Projects on behalf of one or more of the Members and/or CCCFA, all as further described in Section 2.03 hereof. CCCFA will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance or incurrence of Bonds to finance or refinance Prepayment Projects on behalf of one or more of the Members and/or CCCFA in accordance with the Act. CCCFA is not being formed for the purposes of providing municipal services within the meaning of Section 6503.6 or Section 6503.8 of the Act.

**Section 2.03 Powers.** CCCFA, in its own name, shall have any and all power to undertake Prepayment Projects on behalf of one or more of the Members and/or CCCFA, and to finance or refinance such Prepayment Projects through the sale and issuance or incurring of Bonds for the purposes set forth in Section 2.02 hereof. CCCFA is empowered to exercise any and all common powers of the Members, and any other powers provided to it by any applicable laws, beneficial for the issuance or incurrence from time to time of such Bonds pursuant to Article VII hereof. Without limiting the generality of the foregoing, CCCFA, in its own name, shall have the power:

- (a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;
- (b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);
- (c) to employ agents and employees;
- (d) to acquire, manage, maintain or operate any building, works or improvements;
- (e) to acquire, hold, lease or dispose of property;
- (f) to incur debts (including without limitation through the issuance or incurrence of Bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);
- (g) to sue and be sued in its own name;
- (h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;
- (i) to receive, collect, invest and disburse moneys;
- (j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- (k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;
- (l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

- (m) to exercise any other power and take any other action permitted by law to accomplish the purposes of this Agreement.

Such powers shall be exercised by CCCFA subject only to such restrictions upon the manner of exercising such power as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers, as provided in Section 6509 of the Act, and, should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy in the exercise of similar powers; *provided, however*, that nothing herein shall limit the powers of CCCFA under Article 4 of the Act.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred, as further described in Article VII hereof. Such Bonds shall not constitute debts, liabilities or obligations of the Members.

Any of the Prepayment Projects acquired, financed or refinanced by CCCFA shall be operated by a Member or CCCFA for and on behalf of CCCFA, either directly or pursuant to contract or agreement with a third party designated by the applicable Member or Members and approved by CCCFA. None of the Members or CCCFA shall have liability for the breach, negligence or willful misconduct of any such third party.

### **Article III. MEMBERSHIP**

**Section 3.01 Founding Members.** A Public CCA Agency will be qualified to join as a Founding Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as parties to this Agreement and become Founding Members, and existing Associate Members may be elevated to Founding Members, upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as a Founding Member of CCCFA; (2) the approval at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as a Founding Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become a Founding Member for all purposes of this Agreement.

**Section 3.02 Associate Members.** A Public CCA Agency will be qualified to join as an Associate Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as Associate Members of CCCFA upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as an Associate Member of CCCFA; (2) the approval at a regular or special meeting of the Board by a majority vote of the Directors in attendance, provided a quorum is established and maintained, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as an Associate Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become an Associate Member for all purposes of this Agreement.

**Section 3.03 Cost Allocations.**

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Contract.
- (b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project.

**Section 3.04 Withdrawal or Exclusion of Member.**

- (a) Any Member may withdraw from CCCFA upon the following conditions:
  - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;
  - (ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Contract; and
  - (iii) Prior to the Board accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCPFA shall not constitute debt, liabilities or obligations of any Member.
  - (iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Contract or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Contract, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written

notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project Contract or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director (if such Member is a Founding Member) or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Prepayment Project Contract or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion. No such termination shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

- (d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.04 below.

**Section 3.05 Contributions and Advances.** Contributions or advances of public funds and of personnel, equipment or property may be made to CCCFA by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of such purpose. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by such Member and CCCFA at the time of making such advance. It is mutually understood and agreed that no Member is under any obligation to make advances or contributions to CCCFA to provide for the costs and expenses of administration of CCCFA, even though any Member, in its sole discretion, may do so. Any Founding Member may allow the use of personnel, equipment or property in lieu of other contributions or advances to CCCFA.

#### **Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA**

**Section 4.01 Board.** CCCFA shall be administered by a Board which shall consist of one Director representing each Founding Member. Such Board shall be the governing body of this CCCFA, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA.

**Section 4.02 Appointment and Vacancies.** Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents, and may be removed as Director by such Founding Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Founding Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Founding Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

**Section 4.03 Notices.** The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State and the State Controller.

**Section 4.04 Committees.** The Board may create committees to provide advice to the Board or conduct the business of CCCFA subject to delegation of authority from the Board as permitted in the bylaws and any applicable laws.

**Section 4.05 Director Compensation.** Compensation for work performed by Directors, including alternates, on behalf of CCCFA shall be borne by the Founding Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

**Section 4.06 Board Officers.** At its first meeting in every second calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair, each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary, and a Treasurer/Controller, each of whom may, but need not, be selected from among the Directors.

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer/Controller.** The Board shall appoint a qualified person to act as the Treasurer/Controller, who does not need to be a Director. Where a certified public accountant has been designated as Treasurer/Controller of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer/Controller shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer/Controller is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Treasurer/Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code. The Treasurer/Controller shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer/Controller, the amount of receipts since the last such report, and the amount paid out since the first such report.
- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

**Section 4.07 Management of CCCFA.** The Board may appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. If a General Manager has been appointed, the General Manager shall be responsible for the day-to-day operation and management of CCCFA. If no General Manager shall have been appointed, the Treasurer/Controller shall be responsible for the day-to-day operation and management of CCCFA. The General Manager, if any, and the Treasurer/Controller may each enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

**Section 4.08 Other Officers and Employees.** The Board shall have the power to appoint such other officers, deputies, legal counsel (which may be the legal counsel to one or more of the Members) and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

**Section 4.09 Budget.** The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CCCFA shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

**Section 4.10 Fiscal Year.** Unless changed by resolution of the Board, the fiscal year of CCCFA shall be the period from January 1 of each year to and including the following December 31.

## **Article V. MEETINGS OF THE BOARD**

**Section 5.01 Regular Meetings.** The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

**Section 5.02 Special Meetings.** Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code Sections 54956 and 54956.5, as amended.

**Section 5.03 Brown Act Compliance.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*), and as augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, to the extent permitted by law.

**Section 5.04 Minutes.** The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

**Section 5.05 Quorum.** A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

**Section 5.06 Voting.** Each Founding Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be required and sufficient to constitute action, provided a quorum is established and maintained.

**(a) Special Voting Requirements as specified in this Agreement:**

- (i)** Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.
- (ii)** Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

- (iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member's governing body.
- (iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

**Section 5.07 Rules and Regulations.** CCCFA may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

#### **Article VI. PREPAYMENT PROJECTS**

**Section 6.01 Prepayment Projects.** The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to approve the application of any Member for the undertaking, financing, or refinancing of any Prepayment Projects within the purpose and power of CCCFA and to adopt guidelines for their implementation.

**Section 6.02 Prepayment Project Contract.** The costs and other expenses of each Prepayment Project, including without limitation applicable administrative costs of CCCFA with respect to the Prepayment Project, shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project, which will be separate and distinct from this Agreement.

#### **Article VII. BONDS AND OTHER INDEBTEDNESS**

In addition to the other powers conferred on CCCFA by this Agreement, CCCFA shall have the power to issue, incur, sell and deliver Bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects. The terms and conditions of the issuance or incurrence of any such bonds or indebtedness shall be set forth in a resolution, indenture trust agreement, or other instrument pursuant to which the Bonds are issued or incurred, as required by law and as approved by the Board. CCCFA's debts, liabilities and obligations with respect to Bonds issued or incurred under this Agreement and contracts or obligations entered into to carry out the purposes for which Bonds are issued or incurred, shall not constitute a debt, liability or obligation of any of the Members.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

#### **Article VIII. LIMITATION ON LIABILITY OF MEMBERS**

**Section 8.01** Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Prepayment Project Contract such Member enters into pursuant to this Agreement.

**Section 8.02** Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to

benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.

## **Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION**

**Section 9.01 Term and Termination.** This Agreement shall become effective when at least three Founding Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; *provided, however*, this Agreement cannot be terminated while either (a) any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds. This Agreement may be terminated by a two-thirds (2/3) vote of the entire Board that is approved by resolution of each Founding Member's governing body; *provided, however*, that this Agreement and CCCFA shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CCCFA. In any event, CCCFA shall cause all records regarding its formation, existence, the Prepayment Projects, any Bonds issued or incurred by it and proceedings pertaining to its termination to be retained for at least six years (or as otherwise required by law) following termination of CCCFA or final payment of any Bonds issued or incurred by CCCFA, whichever is later.

**Section 9.02 Liquidation; Distribution.** Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CCCFA as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CCCFA, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CCCFA for the purpose of concluding and dissolving the business affairs of CCCFA. Notwithstanding the foregoing, no dissolution of CCCFA shall be permitted while either (a) any Bonds of CCCFA remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.

## **ARTICLE X. ACCOUNTS AND REPORTS**

**Section 10.01 Establishment and Administration of Funds.** CCCFA is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, including without limitation Section 6505 of the Government Code. CCCFA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CCCFA securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CCCFA shall be open to inspection at all reasonable times to each Member and its representatives.

**Section 10.02 Annual Audits and Audit Reports.** The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CCCFA to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member not later than 270 days after the close of the fiscal year or fiscal years under examination. CCCFA will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

## **ARTICLE XI. GENERAL PROVISIONS**

**Section 11.01 Conflict of Interest Policy.** CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California. Counsel to CCCFA for financing

matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.

**Section 11.02 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither a Member nor CCCFA may assign any right or obligation under this Agreement without the consent of all other Members.

**Section 11.03 Amendments.** Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of the entire Board. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Founding Members pursuant to each Founding Member's applicable approval process, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of all Founding Members pursuant to each Founding Member's applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least thirty (30) days prior to the date upon which the Board votes on such amendments. Each Member hereby agrees to take any actions necessary on its part to approve any amendment adopted pursuant to this Section 11.03, and if any Member fails to perform any such actions, such Member shall be deemed to have submitted a resolution of withdrawal pursuant to the provisions of Section 3.04 hereof.

Notwithstanding the foregoing, this Agreement shall not terminate while any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

**Section 11.04 Indemnification and Insurance.** To the fullest extent permitted by law, CCCFA shall defend, indemnify, and hold harmless the Members and each Director, alternate, officer, employee and agent from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CCCFA under this Agreement to the extent not otherwise provided under a Prepayment Project Contract. CCCFA shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CCCFA and the Members.

**Section 11.05 Waiver of Personal Liability.** No member, director, commissioner, officer, agent or employee of CCCFA or the Members, respectively, past, present or future, shall be individually or personally liable for the observance or performance of any terms, conditions or provisions hereof or for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of CCCFA or the actions undertaken pursuant to this Agreement; provided, however, that nothing herein shall relieve any such person from the performance of any official duty provided hereby or by applicable provision of law.

**Section 11.06 Limitation of Rights.** All of the covenants, agreements, terms and conditions in this Agreement to be observed or performed by or on behalf of CCCFA or the Members shall be for the sole and exclusive benefit of CCCFA and the Members, whether so expressed or not, and nothing contained herein, express or implied, is intended to or shall give any other person other than CCCFA and the Members any legal or equitable right, remedy or claim hereunder.

**Section 11.07 Notices.** The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service of process on behalf of CCCFA. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member, and separately to the Director appointed by such Founding Member, to their respective addresses on file with CCCFA.

**Section 11.08 Severability.** Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

**Section 11.09 Section Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

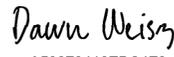
**Section 11.10 Choice of Law.** This Agreement will be governed and construed in accordance with the laws of the State of California.

**Section 11.11 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

**Section 11.12 Dispute Resolution.** The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board. In the event such mediation fails to settle a dispute, the parties may pursue any remedies provided by law.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

DocuSigned by:  
By:   
A59878416EBC4F8...  
Name: Dawn Weisz  
Title: CEO  
CCA Name: MCE  
Date: June 25, 2021

DocuSigned by:  
By:   
5CA64E9AC4C24C3...  
Name: Girish Balachandran  
Title: CEO  
CCA Name: Silicon Valley Clean Energy  
Date: June 25, 2021

DocuSigned by:  
By:   
9DF6BA3222CE44F...  
Name: Nick Chaset  
Title: CEO  
CCA Name: East Bay Community Energy  
Date: June 25, 2021

DocuSigned by:  
By:   
69C253774488497...  
Name: Tom Habashi  
Title: CEO  
CCA Name: central coast community energy  
Date: June 25, 2021