



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

**Wednesday, September 21, 2022**

**1:30 p.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 Executive 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 Access the Meeting:**

<https://us06web.zoom.us/j/86842423936>

or

Dial: (720) 707-2699 Meeting ID: 868 4242 3936

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."

**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) 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 you wish to make a comment other than by Zoom or phone, you may submit written comments during the meeting via email to: [clerk@cleanpoweralliance.org](mailto:clerk@cleanpoweralliance.org).

Clean Power Alliance Executive Committee Meeting  
September 21, 2022

*Meetings are accessible to people 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 [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 Committee 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.*

*Each speaker is customarily 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 Clean Power Alliance [Policy No. 8 – Public Comments](#) for more information.*

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## **CALL TO ORDER AND ROLL CALL**

## **GENERAL PUBLIC COMMENT**

## **CONSENT AGENDA**

1. Approve Minutes from August 17, 2022, Executive Committee Meeting

## **REGULAR AGENDA**

2. Oral Update from the Chief Executive Officer on CPA Operations
3. Review Draft Agenda for the October 6, 2022, Board of Directors Meeting
4. Review Potential Amendments to the Joint Powers Agreement
5. Review and Provide Input on Proposed Board Action for Prepayment Transaction

## **COMMITTEE MEMBER COMMENTS**

## **ADJOURN – NEXT MEETING OCTOBER 19, 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 Executive Committee of the

Clean Power Alliance of Southern California

Wednesday, August 17, 2022, 1:30 p.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 Executive Committee conducted this meeting remotely.*

**CALL TO ORDER & ROLL CALL**

Chair Gold called the meeting to order at 1:30 p.m. and Gabby Monzon, Board Clerk, conducted roll call.

<b>Roll Call</b>			
<b>Agoura Hills</b>	Deborah Klein Lopez	Committee Member	Remote
<b>Beverly Hills</b>	Julian Gold	Chair	Remote
<b>Camarillo</b>	Susan Santangelo	Committee Member	Remote
<b>Hawthorne</b>	Alex Monteiro	Committee Member	Remote
<b>Los Angeles County</b>	Sheila Kuehl	Vice Chair	Remote
<b>Ojai</b>	Betsy Stix	Committee Member	Remote
<b>Sierra Madre</b>	Robert Parkhurst	Committee Member	Remote
<b>South Pasadena</b>	Diana Mahmud	Committee Member	Remote
<b>Ventura County</b>	Linda Parks	Vice Chair	Remote
<b>West Hollywood</b>	Anne McIntosh	Alternate Committee Member	Remote

All votes are unanimous unless otherwise stated.

The Committee recognized a moment of silence in honor of Ventura County Supervisor Carmen Ramirez.

**GENERAL PUBLIC COMMENT**

There was no public comment.

**CONSENT AGENDA**

1. Approve Minutes from June 15, 2022 Executive Committee Meeting

**Motion:** Committee Member Mahmud, South Pasadena

**Second:** Committee Member Monteiro, Hawthorne  
**Vote:** Item 1 was approved by a roll call vote with abstention by Committee Members Monteiro and Parkhurst.

## **REGULAR AGENDA**

### 2. Oral Update from the Chief Executive Officer on CPA Operations

Ted Bardacke, CEO, provided a presentation on the Inflation Reduction Act (IRA) and its implications for CPA, highlighted the four major items associated with the IRA, summarized its effects on clean energy, outlined potential opportunities available to CPA, and reviewed a climate impact graph. Committee Member Mahmud inquired whether the financial advantages of issuing tax exempt bonds would be roughly equivalent to financial advantages associated with prepayment bonds. Mr. Bardacke indicated it's not clear and would depend partly on CPA's costs for acquisition and bond issuance rates. Responding to Committee Member Mahmud's question regarding program funding, Mr. Bardacke identified a variety of ways it would be administered, including tax credits administered by the IRS; rebates and programs via state funding. Responding to Committee Member Parkhurst's question concerning transmission funding, Mr. Bardacke indicated that tax credits for new transmission projects were included in the original Build Back Better program but not in the Inflation Reduction Act, though there was a promise that permitting processes would be addressed in subsequent legislation. Vice Chair Parks inquired if CPA staff will do an analysis of the benefits of owning energy assets; Mr. Bardacke said the analysis will be a sizable organizational undertaking.

Mr. Bardacke reviewed the timeline for upcoming CPA customer noticing which includes the annual Joint Rate Comparison (JRC) mailer, annual Power Content Label mailers, default change notice mailers, and messages regarding the end of the California Alternate Rates for Energy (CARE) rate freeze. In response to questions from the Committee, staff explained that the JRC would list CPA's three rates and Southern California Edison's (SCE) three rates. Mailers may yield an increase in calls to CPA's call center but historically, mailers have not had a significant impact on opt-outs. With regard to SCE customers and its renewables rates, staff indicated that the mailers would include fine print disclosing that SCE renewable rates are no longer available to new customers, with the specific format developed in collaboration with SCE and the California Public Utilities Commission (CPUC). SCE plans to add new energy resources, however, their program is still capped.

## **CLOSED SESSION**

### 3. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: 1

Nancy Whang, General Counsel, reported that no reportable action was taken.

**REGULAR AGENDA (Continued)**

4. Review Draft Agenda for the September 1, 2022, Board of Directors Meeting  
Mr. Bardacke discussed items on the agenda, including the annual load by jurisdiction report to be used in the case of a weighted Board vote; an update on the 2022 Integrated Resources Plan (IRP), with the request that the Board delegate its approval authority to the Energy Committee; and approval of a Geothermal renewable energy project if successfully negotiated over the next few weeks.
5. Review Proposed Expansion Invitations and Provide Input  
Mr. Bardacke provided a presentation on proposed 2022 expansion invitations and reviewed three expansion priorities. Out of all the potential candidates, Hermosa Beach, Monrovia, and Santa Paula decided to move forward with the application process this year. Mr. Bardacke reviewed data reflecting new cities' load percentages, listed expansion benefits, risks, and mitigants. Mr. Bardacke emphasized that while there are risks to expansion, the addition of these cities presents low risk due to their small size, similarities with communities in the same climate zones, and similar load profiles. In addition, each city contributed to a feasibility study to determine the financial impact to CPA's existing customers, and to identify unusual customer or load configurations and potential flaws. Mr. Bardacke reviewed projected first-year net revenue impacts and projected bill impacts to current customers, which illustrate minimal upward pressure on rates. Lastly, Mr. Bardacke outlined the process and timeline for the proposed expansion and requested feedback from the Executive Committee.

In response to Vice Chair Kuehl's question regarding the manner in which cities expressed interest, Mr. Bardacke indicated that the cities of Hermosa Beach and Santa Paula both took a formal City Council vote to express interest and to conduct the feasibility study. In the case on Monrovia, the Mayor and the City Manager expressed interest in moving forward. Vice Chair Kuehl expressed concern that the November elections are approaching, and new city councils may decide against joining CPA and asked what the process would be for CPA if there was a change due to new City Councils. Mr. Bardacke indicated that in general, cities that vote to withdraw from CPA would be required to financially reimburse CPA for power acquired on their behalf; Monrovia's City Council elections were in June so there will be no transition this year; Hermosa Beach and Santa Paula have gone through several election cycles but have always been interested in joining a Community Choice Aggregation (CCA). Karen Schmidt, Director of Rates & Strategy, noted that in conversations with other cities, a few pointed to the upcoming elections and anticipated changeover as reasons for not moving forward with CPA. Committee Member Parkhurst asked questions regarding the cost component of the expansion and the impact on CPA's 2024 compliance obligations. Mr. Langer clarified that the cost of energy could go up \$0.12 to \$0.15 cents per customer, per month because of the need to procure new energy for new customers. Mr. Langer indicated that compliance obligations for renewables extend over multiple-year compliance periods; new customers would impact CPA's compliance period only after CPA has begun serving an energy load to those customers. The Midterm Reliability (MTR) obligations are locked in; therefore, the expansion will not increase the number of megawatts needed for the MTR; there is no additional regulatory risk associated with the expansion. Committee Member Mahmud inquired if CPA intended to defer serving load to new cities so as to avoid exacerbating compliance with CPA's MTR objectives, and Mr. Langer indicated

that was not the case; however, it does makes financial sense to avoid the high cost of resource adequacy in the summer months. Committee Member Lopez noted that the City of Santa Paula is known to have had its start as an 'oil town' that is now moving towards clean energy, and this is an opportunity to illustrate CPA's progress. Vice Chair Parks echoed Committee Member Lopez's comment, adding that Santa Paula is a disadvantaged community as well and with the expansion comes with more land opportunities for new facilities. Chair Gold opined that the price of energy will continue to fluctuate, but the goal of CPA should be to affordably accumulate as many communities as possible, expressing support for the expansion of all three cities.

#### **COMMITTEE MEMBER COMMENTS**

Committee Member Mahmud suggested that the upcoming Board of Directors meeting adjourn in memory of Ventura County Supervisor Carmen Ramirez, and Chair Gold concurred. Committee Member Lopez announced that the City of Agoura Hills recently approved a Memorandum of Understanding with CPA for the Power Ready Program.

#### **ADJOURN**

Chair Gold adjourned the meeting in memory of Ventura County Supervisor Ramirez at 3:28 p.m.



## Staff Report – Agenda Item 2

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**To:** Clean Power Alliance (CPA) Executive Committee  
**From:** Ted Bardacke, Chief Executive Officer  
**Subject:** Oral Update from the CEO on CPA Operations  
**Date:** September 21, 2022

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The CEO will provide an oral report on CPA operations, including:

- Heat Wave Debrief
- Default Change Implementation



## Staff Report – Agenda Item 3

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**To:** Clean Power Alliance (CPA) Executive Committee  
**From:** Ted Bardacke, Chief Executive Officer  
**Subject:** Review Draft Agenda for October 6, 2022 Board of Directors Meeting  
**Date:** September 21, 2022

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Staff will provide an overview of the proposed agenda items for the October 6, 2022, Board of Directors meeting for review and feedback from the Executive Committee. The draft Board agenda is attached to this staff report. Information on the main items for Board consideration is provided below.

### **CONSENT AGENDA**

The following action items are recommended for inclusion on the Consent Agenda of the October Board meeting.

#### **Notification of Joint Powers Agreement Amendments**

This item will be subject to a separate presentation to the Executive Committee.

#### **Long Term Resource Adequacy (RA) Allocation from Southern California Edison**

Pursuant to CPUC Decision 22-05-015, SCE is required to make a one-time offer of Resource Adequacy (RA) capacity associated with its IRP Procurement Track procurement to CCAs on behalf of customers who had departed bundled SCE service between November 2019 and May 2022. CPA's Westlake Village load qualifies for this procurement offer. CPA has the option to enter into a bilateral agreement with SCE to acquire RA capacity from SCE's IRP Procurement Track resources, based on Westlake Village's relative load share, at the System RA Market Price Benchmark (i.e. market price). The amount of RA available via this offer is small (less than 0.5% of CPA's annual need at most) and with RA scarce and the price to be set at market rates, the deal carries very little risk. Given that the term of the contract is longer than five years (December

2022 until September 2041), this agreement would require approval by CPA's Board per CPA's Energy Risk Management Policy (ERMP). If CPA's Board approves the agreement, the agreement will subsequently need CPUC approval via a Tier 1 Advice Letter filed by SCE.

### **REGULAR AGENDA**

The following items are recommended for inclusion on the Regular Agenda of the October Board meeting.

#### **Approval of Geothermal Power Purchase Agreement**

In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026, including a specific target to procure 59 MW of new baseload renewable (i.e. geothermal) capacity. New geothermal capacity is difficult to procure due to the scarcity of potential sites and lack of available transmission. Geothermal capacity is also in high demand due to the CPUC's procurement order as well as the attractiveness of baseload renewable resources under the restructuring of the RA program. On July 27<sup>th</sup>, 2022, the Energy Planning & Resources Committee approved CPA entering into two bilateral power purchase agreement negotiations with an in-state geothermal project to procure geothermal capacity and energy. CPA is currently in exclusive negotiations with these two contracts and may bring both to the October Board meeting for Board approval consideration. Per CPA's ERMP, any power purchase transactions greater than five years require approval by the Board.

#### **Approval of Power Share RFO Power Purchase Agreement**

In December 2021, CPA launched its 2021 Power Share RFO targeting procurement of renewable energy projects that will fulfill its supply requirements for the Power Share program, including the DAC Green Tariff (DAC-GT) and Community Solar (CS-GT) programs. CPA received a total of eight responses to the RFO, including six DAC-GT and two Community Solar (CS-GT) offers. During its July 27<sup>th</sup> meeting, the Energy Planning & Resources Committee approved a shortlist of seven projects between two different developers. CPA is currently in exclusive negotiations with these seven projects and may

bring up to five shortlisted projects to the October Board meeting for Board approval consideration. Per CPA's ERMP, any power purchase transactions greater than five years require approval by the Board.

### **Existing Power Purchase Agreements Amendments**

As previously discussed with the Board, since 2020, unprecedented industry-wide challenges have strained renewable energy developers' ability to deliver projects on-time and at cost, including interconnection delays, ongoing pandemic-related supply chain impacts, U.S. trade actions, and rising commodity prices (further exacerbated by the Ukraine War). In response to these industry-wide challenges, to reduce the risks of potential contract terminations, CPA has continued to work with developers in negotiating amendments to PPAs including terms that would provide developers more time to meet their guaranteed online dates and/or refresh PPA pricing. Staff may bring several PPA amendments of this type to the October Board meeting for consideration. Per CPA's ERMP, material amendments to long-term PPAs, including amendments to online dates and/or price, require approval by the Board.

### **Energy Prepayment Transaction**

This item will be subject to a separate presentation to the Executive Committee.

### **ATTACHMENT**

1. Draft October 6, 2022, Board of Directors Agenda



**REGULAR MEETING of the Board of Directors of the  
Clean Power Alliance of Southern California**

**Thursday, October 6, 2022**

**2:00 p.m.**

**CALL TO ORDER AND ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**GENERAL PUBLIC COMMENT**

**CONSENT AGENDA**

1. Adopt Resolution Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953 (e)
2. Approve Minutes from September 1, 2022, Board of Directors Meeting
3. Notice of Amendment to Joint Powers Agreement
4. Approve Long-Term Resource Adequacy Allocation from Southern California Edison
5. Receive and File Community Advisory Committee Monthly Report

**REGULAR AGENDA**

6. Approve Geothermal Power Purchase Agreement
7. Approve Power Share RFO Power Purchase Agreement
8. Approve Amendments to Existing Power Purchase Agreements
9. Approve Resolution Authorizing CPA to Enter Agreements to Execute an Energy Prepayment Transaction

**MANAGEMENT REPORT**

**COMMITTEE CHAIR UPDATES**

**BOARD MEMBER COMMENTS**

**REPORT FROM THE CHAIR**

**ADJOURN – NEXT REGULAR MEETING ON NOVEMBER 3, 2022**



## Staff Report – Agenda Item 4

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

**From:** Ted Bardacke, Chief Executive Officer  
Nancy Whang, General Counsel

**Subject:** Clean Up and Potential Amendments to CPA’s Joint Powers Agreement

**Date:** September 21, 2022

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### **RECOMMENDATION**

Review potential amendments to the Joint Powers Agreement (JPA).

### **BACKGROUND: JPA CLEAN UP**

CPA’s current JPA consists of the original June 27, 2017 agreement and three subsequent amendments made over a 13-month period in 2018 and 2019.<sup>1</sup> As CPA works with new cities to join the JPA, staff would like a single clean copy to work with and to take the opportunity to make two minor clean-up edits that reflect prior Board action.

These clean-up edits would include:

- Changing references of “Executive Director” to “Chief Executive Officer”.
- Reflect the Board’s delegation of signing authority to the CEO. Section 5.1 of the JPA states that the Chair or in the absence of the Chair, the Vice Chair “shall sign all contracts.” Since the approval of the Energy Risk Management Policy, the Non-energy Contracting Policy, and the adoption of Resolution 19-05-009, the

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<sup>1</sup> The February 2018 Amendment clarifies the procedures for Withdrawal from the JPA, including reimbursement by the Withdrawing Party to CPA for energy acquired for customers in the Withdrawing Party’s jurisdiction. The April 2018 Amendment changes the name of the organization from Los Angeles Community Choice Energy to Clean Power Alliance. The March 2019 Amendment clarifies procedures for the election of, and term limits for, Board Chair and Vice-Chair.

necessity for having the Chair or Vice Chair sign contracts is no longer present. The JPA should be amended to reflect the primacy of this change.

Amending the JPA requires 30-day Advance Notice to be given. Staff proposes to publish the notice in the October Board Agenda and then have the Board vote on the proposed amendments at the November Board meeting.

### **POTENTIAL AMENDMENTS REGARDING APPOINTMENT PROCEDURES FOR STAFF ALTERNATE DIRECTORS**

In addition to the clean-up amendments described above, staff requests that the Executive Committee discuss potential changes to the appointment procedures for staff alternates to the CPA Board of Directors.

Currently, the JPA requires the governing body of a member agency to appoint and designate, in writing, one Regular Director and up to two Alternate Directors, who may vote on matters when the Regular Director is absent. While a Regular Director is required to be an elected official or a member of the governing body, the JPA expands eligibility of Alternate Directors to either a (i) member of an advisory body, (ii) member agency staff, or (iii) member of the public who has demonstrated knowledge of energy-related matters.<sup>2</sup>

The eligibility criteria for Regular Directors reflect the Board's policy objective of having CPA decisions rest with a director who is accountable to voters. In expanding the eligibility criteria of Alternate Directors to member agency staff, the Board's policy objective was for staff to serve as a resource for Regular Directors, to develop institutional knowledge, and to act as a knowledgeable and experienced bridge for incoming Regular Directors, as well as attend Board meetings in the case of a necessary absence by a Regular Director. Staff have capably served in this capacity as CPA launched and entered its operations phase.

Member agencies inform CPA in writing of action taken by the governing body to appoint new Regular Directors or elected Alternates. Until recently, member agencies have had

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<sup>2</sup> When appointing a non-elected Alternate Director, governing bodies have predominantly appointed city or county staff. Ojai, Santa Monica, and South Pasadena are jurisdictions that have appointed members of the public.

staff have remained consistent, and any staffing changes were so infrequent that CPA staff were able to track these changes with relative ease.

In the last year, however, turnover, internal reassignment, and retirements among county/city staff<sup>3</sup> have resulted in new staff Alternates where (i) a new staff Alternate attends a CPA Board meeting and CPA staff has not received written notice of action taken the governing body; or (ii) the governing body has delegated its authority to one or more city staff and a staff member designates one or more other alternates depending on resource constraints. This requires CPA staff to verify Alternate delegations and designations ex post. While CPA staff has been able to track down the required information so far, it raises questions about whether the designation of staff Alternates by the governing body is procedurally cumbersome given that staff Alternates mainly serve as a resource for Regular Directors and whether greater procedural clarity can be provided to member agencies regarding staff Alternate designations.

## **OPTIONS**

Within the context of last year's developments, staff presents the following JPA amendment options regarding staff Alternate designations, including potential benefits and challenges of each.

1. Regular Director designates the staff Alternate.
  - a. Benefits: Regular Director can be supported by staff who the Regular Director believes is most knowledgeable and experienced about CPA issues.
  - b. Challenges: Regular Director, particularly newly elected, may not feel comfortable designating a particular staff member because the Regular Director does not know if that staff member has resource constraints or is not knowledgeable enough to designate staff. It does not give the City Manager<sup>4</sup> discretion to manage staff.

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<sup>3</sup> For example, LA County, Arcadia, Calabasas, Hawthorne, Malibu, Manhattan Beach, and West Hollywood.

<sup>4</sup> "City Manager" refers to the chief executive of a member agency, including, e.g., the Chief Executive of LA and Ventura Counties.

2. City Manager designates the staff Alternate by name
  - a. Benefits: The City Manager retains discretion to manage member agency business while giving CPA more certainty over staff Alternate designations.
  - b. Challenges: City Managers may consider the requirement to designate by name (rather than by title) too prescriptive. Potentially dilutes policy primacy of Regular Directors.
3. No change: The governing body remains the entity to designate a staff Alternate or to delegate that designation to one or more city staff.
  - a. Benefits: For member agencies that have a controlled process for managing designations to Boards or agencies, no change will need to be made to their current process.
  - b. Challenges: As discussed above, staff Alternates may continue to change and the continuity or institutional knowledge of having a consistent staff Alternate may be lost. CPA staff may not be able to track down staff Alternate designations and/or the need to have a staff alternate is more urgent than the ability of the governing body to take formal action.

If the process for naming staff Alternate Directors is changed and the JPA amended, staff proposes to have this change occur when a new Regular Director is appointed. This will minimize disruptions for those member jurisdictions whose governing bodies have already named a staff Alternate who continues to serve in that role.

## **ATTACHMENT**

1. Joint Powers Agreement Amendment PowerPoint presentation



# Item 4 - Joint Powers Agreement (JPA) Amendment

September 21, 2022



# Background

- ⚡ JPA requires the governing body of a member agency to appoint, in writing, one Regular Director and up to two Alternate Directors
  - Alternate Directors may be city/county staff.
  - Staff are an invaluable resource to Regular Directors and provide continuity and institutional knowledge for the Regular Director and member agency
- ⚡ Until recently, member agencies have had little need to notice CPA regarding staff Alternates because designated staff have remained mainly consistent.
- ⚡ Last year, however, turnover, internal reassignment, and retirements among county/city staff have resulted in
  - (i) New staff Alternates who attend CPA Board meetings even though CPA has not received written notice of the designation
  - (ii) Authorized member agency staff further delegating to one or more new staff



# Options Regarding Staff Alternate Appointments

- ⚡ The change in staff Alternates raises the question of whether the designation of staff Alternates by the governing body is (i) procedurally cumbersome given that staff Alternates mainly serve as a resource for Regular Directors and (ii) whether greater procedural clarity can be provided to member agencies regarding staff Alternate designations
- ⚡ Within this context, staff presents for consideration the following JPA amendment options, including a summary of benefits and challenges:

Options	Benefits	Challenges
1. Regular Director designates the staff Alternate.	Regular Director can be supported by staff who the Regular Director believes is most knowledgeable and experienced about CPA issues.	Regular Director discomfort in designating a particular staff member. Impacts City Manager's discretion.
2. City Manager selects staff by name	City Manager retains management discretion. CPA has increased certainty and information over staff Alternate designations.	City Manager considers the requirement to specify a name (rather than by title) to be unduly prescriptive. Potentially dilutes policy primacy of Regular Directors.
3. No change (governing body selects staff Alternate)	No need for member agencies to change their internal processes in designating staff Alternates.	Need for staff Alternate is more urgent than governing body's capacity to take action. Loss of continuity or institutional knowledge of having consistent staff Alternate. CPA staff administrative burden of tracking process in writing.

# Questions?



## Staff Report – Agenda Item 5

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

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

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

**Subject:** Prepayment Transaction

**Date:** September 21, 2022

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### **RECOMMENDATION**

Review and provide input.

### **ATTACHMENTS**

1. Presentation
2. Draft Versions of Major Prepay Documents
  - a. Aron Prepay Amended & Restated LLC Agreement (Page 37)
  - b. Clean Energy Purchase Contract (Page 66)
  - c. Form of Limited Assignment Agreement (Page 142)
  - d. Operation Services Agreement (Page 153)



# Item 5: Preview of Proposed Board Action for Prepayment Transaction

September 21, 2022



# Background

- Pursuant to Board direction, staff is in the process of preparing documents to support a renewable energy prepay transaction. The prepay transaction is expected to result in \$2 million - \$5 million of annual savings in energy costs.
- Staff introduced prepayment financings to the Executive and Finance Committees in October 2021 and March 2022 and to the Board in May 2022
- On May 11, 2022, the Board approved contracts with Municipal Capital Markets (MCM) and Chapman and Cutler (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
- On July 7, 2022, the Board approved the selection of Goldman Sachs Group, Inc. (GS) and its subsidiary J. Aron & Company, LLC (J Aron) as Prepaid Supplier and authorized CPA to join California Community Choice Financing Authority (CCCFA), which will act as the Bond Issuer
- In Q3 2022 Staff worked with MCM and C&C to negotiate and draft prepay documents with GS and CCCFA
- CPA joined CCCFA in September 2022. CPA's CEO currently serves on the CCCFA Board of Directors. CPA's CFO is a member of CCCFA's operational "working group".

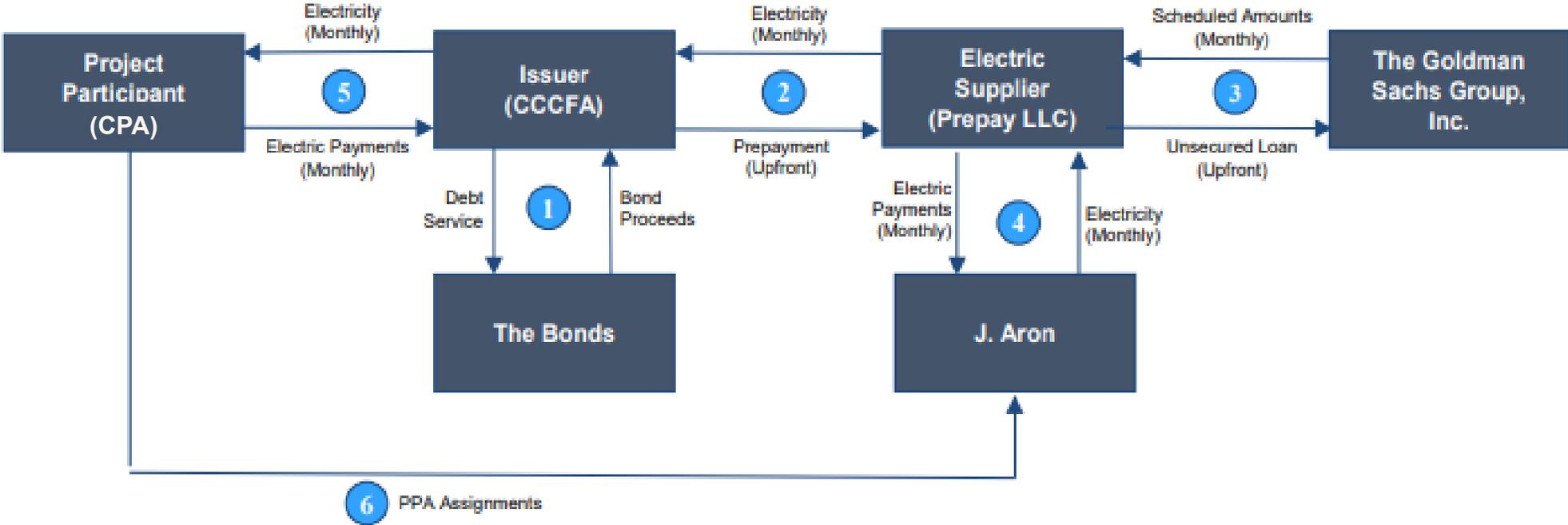


# Summary of the Proposed Board Action

Staff intends to present at the October Board Meeting a Resolution that encompasses the following approvals or authorizations:

1. Parameters under which the prepay transaction can be completed
  - Bonds will be limited obligations of CCCFA, not obligations of CPA
  - Aggregate bond principal will not exceed \$1.3 billion
  - The minimum "Monthly Discount Percentage" (i.e., cost savings) shall be at least 5%
  - CCCFA total cost of issuance shall not exceed 1.25% of the amount of bond proceeds
2. Proposed CPA Documents or document forms (described in following slides)
3. Direction to CCCFA to make payments to service providers for issuance costs out of bond proceeds
4. Authorize staff to enter into Limited Assignment Agreements (LAAs) with one or more existing PPA counterparties
  - LAAs presented for approval in October may be "form" LAAs rather than execution versions depending on timing and outcome of discussions with existing PPA counterparties; actual LAAs may be presented to Board at a later date if necessary.

# Prepayment Transaction Diagram



1. Debt Issuance – CCCFA issues the prepay bonds
2. Prepayment – CCCFA remits net bond proceeds to Prepay LLC in return for 30 years of assigned electricity deliveries (see 6)
3. Unsecured Loan – Prepay LLC loans net bond proceeds to GS. GS makes fixed monthly payments to Prepay LLC equal to expected assigned electricity multiplied by the assigned PPA price
4. Electricity Supply – Prepay LLC enters into a long-term agreement to purchase electricity from J. Aron to match assigned electricity quantities/terms

5. Project Participant – CCCFA sells CPA all assigned electricity delivered by Prepay LLC at the discounted prepay price
6. Assigned PPAs – CPA assigns certain rights and obligations as a Buyer on existing PPAs to J. Aron; J. Aron makes monthly payments to PPA Sellers for assigned delivered energy

# Prepay Documents – Bond Issuance and Trustee

Document	Parties	Description
Preliminary Official Statement	CCCFA / GS / Trustee	Describes the Bonds and includes an Appendix with descriptive, operating and financial information re: CPA – used for marketing the Bonds
Trust / Bond Indenture	CCCFA / Trustee	Terms and authorization of the Bonds, pledge of revenues, contract rights, etc. to secure the Bonds Creates funds and accounts and specifies authorized uses of funds, events of defaults, rights and duties of the Trustee, etc.
Bond Purchase Agreement	CCCFA / GS	Contract for the sale of the Bonds executed on the Bond pricing date. Provides that GS is obligated to purchase the Bonds, specifies the price and the maturities, rates, etc., provides for certain representations and warranties of GS and CCCFA Includes the conditions to closing
Repricing Agreement	CCCFA / Prepay LLC	Provides for the methodology for determining the discount for prepaid power for future reset periods

# Prepay Documents – Prepaid Supplier & Funding Recipient

Document	Parties	Description
Aron Prepay Amended & Restated LLC Agreement	J. Aron	Amends J. Aron's original LLC Agreement that created Prepay LLC. Enumerates the purposes of the LLC, board representation, and requirements for approval of certain matters including selection of a future funding recipient for a subsequent reset period. Provides for Prepay LLC to have one board member appointed by CCCFA. (will be an Officer of CPA)
Subordinated Term Loan Agreement	J. Aron / Prepay LLC	Provides for a subordinate loan from J. Aron to Prepay LLC (functionally equivalent to equity)
Funding Agreement	Prepay LLC / GS	Provides for a term loan from Prepay LLC to GS
GSG Guaranty to LLC	GS / Prepay LLC	Guaranty from Goldman supporting J Aron's obligations to Prepay LLC under the EPSSA
Electricity Purchase Sale & Service Agreement (EPSSA)	J. Aron / Prepay LLC	Agreement of Prepay LLC to purchase Energy and related products from J. Aron for delivery by Prepay LLC to CCFA and delivery by CCCFA to CPA



# Prepay Documents – Energy Purchase Agreements, Assignments, and Settlement Mechanics

Document	Parties	Description
Limited Assignment Agreement(s) (LAAs)	CPA / J. Aron / PPA Sellers	Assigns rights and obligations of PPA Buyer (for energy / RECs) to J. Aron for duration of prepay. Defines energy quantities assigned to J. Aron.
Form of LAA	CPA / J. Aron	For assignment of future PPAs to J. Aron (to replace expiring or removed PPAs). Mirror form and provisions of current LAAs.
Letter Agreement re: LAA	CPA / J. Aron	CPA and J. Aron agree to use Form of LAA for future PPA assignments into the prepay
Clean Energy Purchase Contract (CEPC)	CPA / CCCFA	Agreement of CPA to purchase discounted power from CCCFA
Operational Services Agreement	CPA / CCCFA	Provides for CPA to control various actions of CCCFA relating to project operations absent a default
Master Power Supply Agreement (MPSA)	CCCFA / J. Aron	Mirror of CEPC. Agreement of J. Aron to deliver power through CCCFA. Power has been prepaid via bond proceeds.
PPA Payment Custodial Agreement	CPA / CCCFA / J. Aron / Prepay LLC / Custodian	Provides for creation of a custody account for receipt of payments from J. Aron and CPA to settle monthly PPA Seller invoices
Swap Agreements	CCCFA / Swap Counterparty(ies) / Trustee	Swaps are dormant and only activate in the event insufficient PPAs are assigned to J. Aron in future or upon CPA load loss



# Prepayment Transaction Timeline: Board & Committees

- 
- September 2022**
- Prepay Update to Executive Committee (September 21)
  - Prepay Update to Finance Committee (September 28)
  - Preparation of prepay transaction documents and Resolution of the Board

- 
- October 2022**
- Board (October 6)
    - Present Resolution to authorize prepay transaction parameters and approve prepay documents

- 
- November 2022**
- Board (November 3)
    - Presentation of Limited Assignment Agreements for approval (if necessary)

- 
- Oct – Dec 2022**
- Transaction close



# Attached Documents

- Draft versions of the following prepay documents are attached :
  1. Clean Energy Purchase Contract
  2. Form of Limited Assignment Agreement
  3. Operational Services Agreement
  4. Aron Prepay Amended & Restated LLC Agreement
- Draft prepay documents may be revised as negotiations are ongoing with J. Aron and PPA Sellers
- The Board will be presented with these documents and a Resolution specifying the approvals and authorizations.



# Questions



# Appendix



# Transaction Summary – Prepay Bond Issuance

- A CPA prepay transaction will involve the sale of tax-exempt bonds to bond holders by CCCFA.<sup>(1)</sup>
- CCCFA remits the net bond proceeds to a special purpose entity, Aron Prepay LLC (Prepay LLC), in return for a 30-year supply of electricity pursuant to the Master Power Supply Agreement (MPSA).
  - The creation of Prepay LLC provides transparency and market level savings for the initial period of the prepay (5-10 years) as well as at each subsequent interest rate reset which is estimated to occur each 5-10 years over the bond term. Without Prepay LLC, prepay transaction terminates if GS cannot offer minimum savings at reset.
- Prepay LLC lends the net bond proceeds to GS under an unsecured term loan agreement (the Funding Agreement). GS makes monthly payments to Prepay LLC sufficient to allow it to meet its payment obligations under the Electricity Purchase Sale & Service Agreement (EPSSA; see below). GS issues a guaranty to back obligations of Prepay LLC under the MPSA.<sup>(2)</sup>
- J. Aron and Prepay LLC enter into the EPSSA under which Prepay LLC purchases electricity + related products from J. Aron for delivery to CCCFA. J. Aron equitizes Prepay LLC through the Subordinated Term Loan Agreement.

(1) CPA does not issue the bonds. Bond proceeds do not flow to CPA or to renewable energy project developers/owners. CPA has no obligation to repay the bonds.

(2) The bonds carry the credit rating of Goldman Sachs Group, Inc.

# Transaction Summary – PPA Assignments and Settlement

- CPA will assign certain rights and obligations under existing PPAs with PPA Sellers to J. Aron via LAAs
- Under the LAAs, the PPA Sellers will deliver assigned renewable energy to J. Aron and J. Aron assumes the obligation to pay the PPA Sellers for the assigned energy
  - Title to the renewable energy passes instantaneously from PPA Seller to J. Aron to Prepay LLC to CCCFA to CPA at the energy delivery point
  - CPA retains other rights and unassigned payment obligations under the PPAs
- CPA and CCCFA enter into the Clean Energy Purchase Contract (CEPC) under which CPA purchases assigned electricity + related products from CCCFA at a discounted price. **This is the source of CPA's savings.** CCCFA uses CPA's payments to service debt owed to bond holders.
  - CPA is responsible for assigning sufficient electricity into the prepay transaction via the LAAs
  - If an LAA terminates or expires, CPA will designate another PPA Seller for the term of the CEPC
- PPA Sellers continue to provide a single monthly invoice for energy and related costs. Monthly payment obligations to the PPA Sellers are split between CPA and J. Aron as follows:
  - J. Aron sells assigned energy to Prepay LLC under the EPSSA, Prepay LLC sells energy to CCCFA under the MPSA, and CCCFA sells energy to CPA under the CEPC
  - J. Aron pays the PPA Seller for assigned energy at the PPA price. CPA pays the PPA Seller for any unassigned obligations under the PPA.
- Settlement of payments are set forth in the PPA Payment Custodial Agreement.

# Prepayment Transaction – Entities

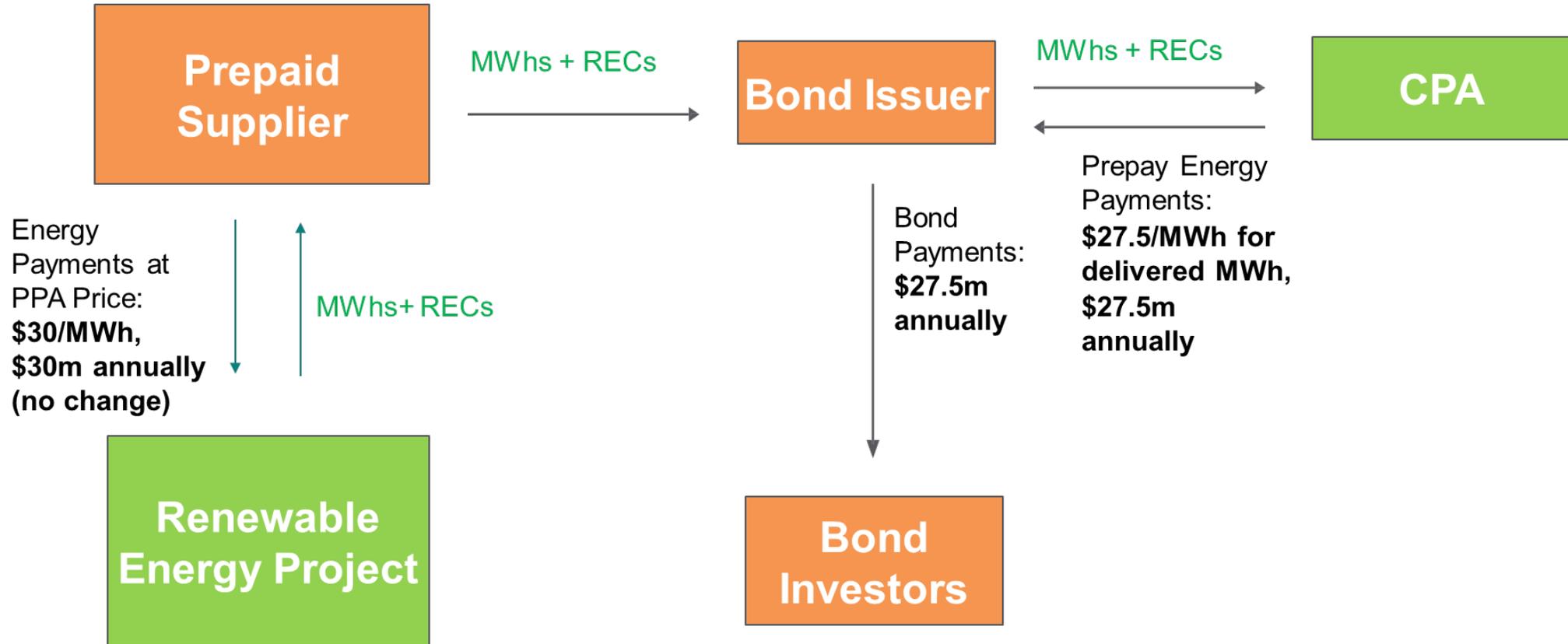
- **California Community Choice Financing Authority (CCCFA) (Bond Issuer)**
  - Issues bond; uses bond proceeds to pay Prepay LLC in exchange for a 30-year supply of energy
  - Delivers energy to CPA in exchange for prepay energy payments under the CEPC
  - Pays Bond Investors
- **Goldman Sachs Group, Inc. (Funding Recipient)**
  - Receives term loan from Prepay LLC for amount of bond proceeds
  - Makes monthly payments to Prepay LLC allowing it to meet obligations to J. Aron under the EPSSA
- **J. Aron / Prepay LLC (Prepaid Supplier)**
  - CPA assigns one or more existing PPAs to J. Aron, which assumes the PPA obligations of the “buyer”
  - J. Aron delivers energy to Prepay LLC under the EPSSA; Prepay LLC delivers energy to CCCFA under the MPSA
  - J. Aron makes monthly payments to PPA Seller via Custodial Account for assigned energy
- **CPA (Project Participant / Purchaser)**
  - Makes fixed monthly payments to CCCFA / Bond Trustee for prepaid energy
  - Makes monthly payments to PPA Seller via Custodial Account for non-prepaid energy, unassigned obligations
- **PPA Sellers**
  - Receive monthly cash flows from Custodial Account for energy assigned to J. Aron + non-prepaid energy and unassigned obligations
- **Service Providers**
  - Municipal Financial Advisor, Bond and Tax Counsel, CPA Prepay Legal Counsel, Prepay Bond Underwriters
  - Support the structuring and issuance of a prepay Bond



# Example Prepay Transaction Flowchart

(Monthly Cash and Electricity Flow)

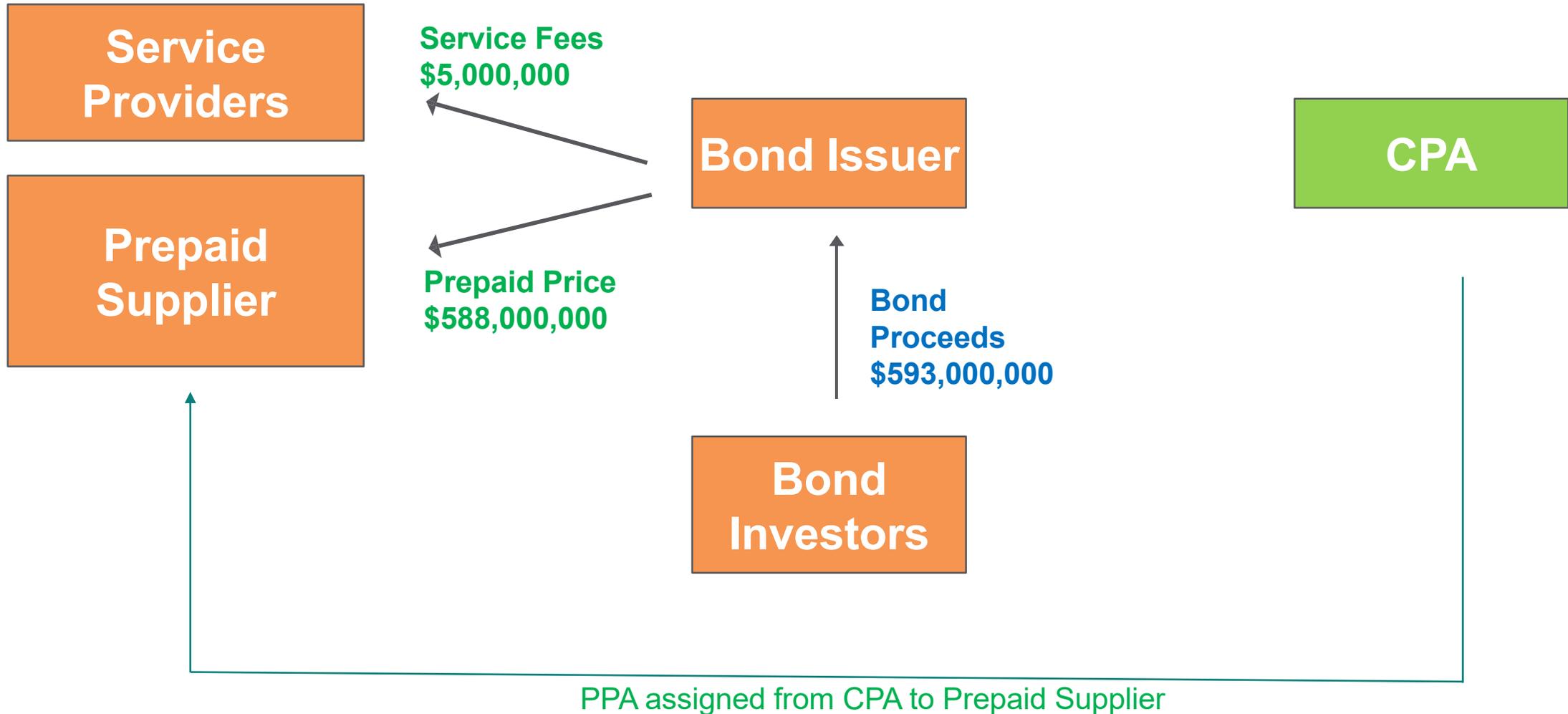
*Dollar amounts included for illustrative purposes only*



# Example Prepay Transaction Flowchart

(At Bond Issuance / Closing)

*Dollar amounts included for illustrative purposes only*



**DRAFT**

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ARON ENERGY PREPAY 14 LLC**

This Amended and Restated Limited Liability Company Agreement (together with the schedules attached hereto, this “Agreement”) of Aron Energy Prepay 14 LLC (the “Company”) is entered into as of [\_\_\_\_], 2022 by J. Aron & Company LLC, a New York limited liability company (“J. Aron”), as the sole equity member of the Company (the “Member”), and Orlando C. Figueroa, as the Independent Director (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, the Member and the Manager entered into the Limited Liability Company Agreement, dated as of [\_\_\_\_], 2022 (the “Original LLC Agreement”);

The Member, by execution of this Agreement, hereby continues the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the “Act”), and the Member and the Independent Director hereby agree to amend and restate the Original LLC Agreement as follows:

Section 1.     Name.

The name of the limited liability company continued hereby is Aron Energy Prepay 14 LLC.

Section 2.     Principal Business Office.

The principal business office of the Company shall be located at 200 West Street, New York, New York 10282 or such other location as may hereafter be determined by the Member.

Section 3.     Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 4.     Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 5.     Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to the Original LLC Agreement and hereby continues as the sole Member of the Company.

(b) Subject to Section 9(i), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Section 18 and Section 20, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Section 19 and Section 21), the Person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as an Independent Director pursuant to Section 10; provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member. The Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. The Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, the Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation, division or conversion of the Company. In order to implement the admission to the Company of the Special Member, the Person acting as the Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as the Special Member, the Person acting as the Independent Director pursuant to Section 10 shall not be a member of the Company.

#### Section 6. Certificates.

Michelle P. Quinn is hereby designated as an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, her powers as an “authorized person” ceased, and the Member thereupon became the designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Act. The Member or the Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in New York and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes. Subject to the limitations set forth in Section 9(i)(iv), the purpose to be conducted or promoted by the Company is solely to engage in the following activities:

(a)

(i) to enter into a Master Power Supply Agreement (the “Master Power Supply Agreement”) with California Community Choice Financing Authority (the “Municipal Issuer”), 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), in connection with its issuance of its [Series 2022 Clean Energy Project Bonds] (the “Bonds”) pursuant to that certain Trust Indenture between the Municipal Issuer and [\_\_\_\_], as trustee (the “Bond Indenture”);

(ii) to enter into a Re-Pricing Agreement with the Municipal Issuer (the “Re-Pricing Agreement”) in connection with the execution of the Master Power Supply Agreement;

(iii) to enter into an Electricity Purchase, Sale and Service Agreement (the “Electricity Sale and Service Agreement”) with J. Aron in connection with the execution of the Master Power Supply Agreement;

(iv) to enter into one or more Subordinated Term Loan Agreements (each, a “Subordinated Loan Agreement”) with the Member;

(v) to enter into an investment agreement, term loan agreement or other similar agreement with a Funding Recipient (as may be amended, supplemented, modified or otherwise replaced, the “Funding Agreement”);

(vi) to enter into (A) one or more fixed-to-floating commodity price swap agreements consistent with the terms of the Master Power Supply Agreement, pursuant to which the Company receives an index-based floating price and will pay a fixed price in relation to the quantities of commodities to be delivered under the Master Power Supply Agreement, (B) any related protocols or regulatory documentation as may be necessary or advisable with respect to such swap agreements and (C) custodial agreements relating to payments to be received and made under such agreements;

(vii) to enter into an SPE Master Custodial Agreement (the “SPE Master Custodial Agreement”) with the Member, the Municipal Issuer and The Bank of New York Mellon, as custodian;

(viii) to deliver a tax certificate to the Municipal Issuer relating to its entry into the Master Power Supply Agreement;

(ix) to enter remarketing agreements consistent with [Section 11] of Exhibit C to the Master Power Supply Agreement;

(x) to enter into any other agreements as may be necessary or advisable in connection with the Clean Energy Project (as defined in the Bond Indenture) (together with the agreements described in clauses (i) - (x), the “Prepaid Transaction Documents”) and deliver any documents and certificates contemplated by the Prepaid Transaction Documents; and

(xi) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware solely as related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes (including the entering into of referral, management, servicing and administration agreements) and to perform its obligations and exercise its rights under the Prepaid Transaction Documents; provided that the Company shall not in any case enter into any contracts, transactions or other arrangements for the acquisition or sale of electricity other than as contemplated under the Prepaid Transaction Documents.

(b) To the extent of their powers set forth in this Agreement and subject to Section 9(d) and Section 9(i), the Manager, on behalf of the Company, may enter into and perform the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Member, Director or other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. For the avoidance of doubt, no Director or any Person other than the Member and the Manager may enter into, execute or deliver any documents, agreements, certificates, or financing statements on behalf of the Company, and the Member and the Manager may only enter into, execute or deliver any documents, agreements, certificates, or financing statements as specifically authorized in this Agreement or by action of the Board.

Section 8. Powers.

Subject to Section 9(d) and Section 9(i), the Company, and the Board and the Manager of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act necessary, convenient or incidental to accomplish its purposes as set forth in Section 7.

Section 9. Management.

(a) Board of Directors. Subject to Section 9(d) and Section 9(i), the business and affairs of the Company shall be managed by or under the direction of a Board of one or more Directors. The number of Directors shall be three, one of which shall be an Independent Director pursuant to Section 10. Each of the Municipal Issuer and the Member shall have the right to appoint one Director. At all times the Board shall have at least one Independent Director. Each Director elected, designated or appointed shall hold office until a successor is elected and qualified or until such Director’s earlier death, resignation, expulsion or removal. Each Director shall execute and deliver the Management Agreement. Directors need not be a Member. The initial Directors designated by the Member and the Municipal Issuer, as applicable, are listed on Schedule D hereto.

(b) Powers. Subject to Section 9(d) and Section 9(i), the Board shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 7, Section 9(d) and Section 9(i), the Board has the authority to bind the Company.

(c) Meetings of the Board of Directors. The Board may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by any Director other than the Independent Director on not less than one day's notice to each Director by telephone, facsimile, mail, email, telegram or any other means of communication.

(d) Quorum: Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum is not present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board entitled to vote on such action consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board.

(i) Notwithstanding any other provision of this Agreement, the Director appointed by the Member shall not participate in any vote of the Board relating to the following, and the Director appointed by the Municipal Issuer shall be entitled to act by written consent with respect to the following and any such act of the Director appointed by the Municipal Issuer shall be the act of the Board:

(A) the designation by the Company of an "Early Termination Date" under the Electricity Sale and Service Agreement;

(B) the designation by the Company of a Product Delivery Termination Date under the Master Power Supply Agreement due to the occurrence of a Ledger Event; provided that, unless the Director appointed by the Municipal Issuer takes action or otherwise provides notice to the contrary within twenty-four hours of the Municipal Issuer's receipt of notice from the Company of a Ledger Event, the Director appointed by the Municipal Issuer shall be deemed to have irrevocably voted to designate a Product Delivery Termination Date and no further action by the Board shall be required for the designation of a Product Delivery Termination Date by the Company;

(C) with respect to a Funding Agreement entered into with an Affiliate Funding Recipient, the election by the Company under the Funding Agreement to grant the Funding Recipient the right to prepay all outstanding amounts under the Funding Agreement following the designation of a Product Delivery Termination Date under the Master Power Supply Agreement due to the occurrence of a Ledger Event; provided that, unless the Director appointed by the Municipal Issuer takes

action or otherwise provides notice to the contrary within twenty-four hours of the Municipal Issuer's receipt of notice from the Company of the designation of a Product Delivery Termination Date due to the occurrence of a Ledger Event, the Director appointed by the Municipal Issuer shall be deemed to have irrevocably voted to have elected to grant the Funding Recipient the right to prepay such amounts and no further action by the Board shall be required for the granting of such right by the Company;

(D) the enforcement of the Funding Agreement, subject to Section 9(d)(ii)(B);

(E) the removal and replacement of J. Aron as Manager hereunder and "Agent" under the Master Power Supply Agreement if the Electricity Sale and Service Agreement between J. Aron and the Company has been terminated due to a J. Aron Default (as defined in such agreement);

(F) the appointment of a third party remarketing agent under Section 11 of Exhibit C to the Master Power Supply Agreement, provided that (A) any such remarketing agent or its guarantor must have an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned to the Bonds, (B) any such agent or its guarantor must have capital stock, surplus and undivided earnings aggregating at least \$100,000,000 and (C) any such agent must be able to satisfy the Member's internal requirements as they relate to "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, PATRIOT Act and similar rules and regulations, unless such requirements are waived by the Member;

(G) the removal and replacement of The Bank of New York Mellon, a New York banking corporation, as "SPE Custodian" under the SPE Master Custodial Agreement, provided that any replacement custodian must (A) have an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned to the Bonds, (B) have capital stock, surplus and undivided earnings aggregating at least \$50,000,000 and (C) be able to satisfy the Member's internal requirements as they relate to "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, unless such requirements are waived by the Member;

(H) if a Qualified Funding Recipient provides one or more Qualified Firm Offers during the Funding Shopping First Period for any Reset Period, then the Director appointed by the Municipal Issuer may direct the Company to execute, prior to the end of such Funding Shopping First Period, a Funding Agreement for such Reset Period with any Qualified Funding Recipient that provides a Qualified Firm Offer; provided that if the Director appointed by the Municipal Issuer does not make such election in a timely manner to achieve closing on a Bond Pricing Date promptly following receipt of such Qualified Firm Offer from a Qualified Funding Recipient, it will be deemed to have directed the Company to accept the

Qualified Firm Offer from a Qualified Funding Recipient that would result in the highest Available Discount for such Reset Period;

(I) if a Qualified Funding Recipient provides one or more Qualified Firm Offers during the Funding Shopping Second Period for any Reset Period, then the Director appointed by the Municipal Issuer shall direct the Company to execute, prior to the end of such Funding Shopping Second Period, a Funding Agreement for such Reset Period with any Qualified Funding Recipient that provides a Qualified Firm Offer; provided that if the Director appointed by the Municipal Issuer does not make such election in a timely manner to achieve closing on a Bond Pricing Date promptly following receipt of such Qualified Firm Offer from a Qualified Funding Recipient, it will be deemed to have directed the Company to accept the Qualified Firm Offer from a Qualified Funding Recipient that would result in the highest Available Discount for such Reset Period; and

(J) if an Affiliate Funding Recipient provides one or more Qualified Firm Offers during the Funding Exclusivity Period for any Reset Period, then the Director appointed by the Municipal Issuer shall direct the Company to execute, prior to the end of such Funding Exclusivity Period, a Funding Agreement for such Reset Period with any Affiliate Funding Recipient that provides a Qualified Firm Offer; provided that if such Director fails to make an election above in a timely manner to achieve closing on a Bond Pricing Date, it will be deemed to have directed the Company to accept the Qualified Firm Offer from an Affiliate Funding Recipient that would result in the highest Available Discount for such Reset Period.

(ii) Notwithstanding any other provision of this Agreement, the Director appointed by the Municipal Issuer shall not participate in any vote of the Board relating to the following, and the Director appointed by the Member shall be entitled to act by written consent with respect to the following and any such act of the Director appointed by the Member shall be the act of the Board:

- (A) the designation by the Company of a Product Delivery Termination Date under the Master Power Supply Agreement due to a termination of a Buyer Swap (as defined therein);
- (B) with respect to a Funding Agreement entered into with a Third Party Funding Recipient, the election by the Company to designate an acceleration of the Funding Agreement following the occurrence of a Product Delivery Termination Date due to a Ledger Event under the Master Power Supply Agreement;
- (C) the termination or replacement of a Seller Swap (as defined in the Master Power Supply Agreement); and
- (D) without limiting the restrictions on the Company set forth in Section 7(a), the entry into any contracts, transactions or other arrangements for the acquisition or sale of electricity by the Company, including

agreement by the Company on the terms thereof including but not limited to pricing.

(iii) Notwithstanding any other provision of this Agreement, the Independent Director shall only be entitled to participate in a vote of the Board relating to a Material Action.

(e) Electronic Communications. Members of the Board may participate in meetings of the Board by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in Person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(f) Compensation of Directors; Expenses. The Member shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a fixed amount as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor.

(g) Removal of Directors. Unless otherwise restricted by law, any Director or the entire Board of Directors may be removed or expelled, with or without cause, at any time by the Person who appointed such Director, and, subject to Section 10, any vacancy caused by any such removal or expulsion may be filled in the same manner.

(h) Directors as Agents. To the extent of their powers set forth in this Agreement and subject to Section 7, Section 9(d) and Section 9(i), the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company; provided that, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company notwithstanding the last sentence of Section 18-402 of the Act.

(i) Limitations on the Company's Activities.

(i) This Section 9(i) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.

(ii) The Member shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definition of "Independent Director" or Section 5(c), Section 7, Section 8, Section 9, Section 10, Section 15, Section 17, Section 18, Section 19, Section 20, Section 21, Section 22, Section 23, Section 26, Section 28 or Schedule A of this Agreement without the unanimous written consent of the Board (including the Independent Director). Subject to this Section 9(i), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 28.

(iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, neither the Member nor the Board nor

the Manager nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the Member and the Board (including the Independent Director), to take any Material Action; provided, however, that the Board may not vote on, or authorize the taking of, any Material Action, unless there is at least one Independent Director then serving in such capacity.

(iv) The Board and the Manager shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if: (1) the Board determines that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Company and (2) the Rating Agency Condition is satisfied. The Board and the Manager also shall cause the Company to:

- (A) maintain all of its accounts, financial statements and bank accounts separate from those of its Affiliates and any other Person in accordance with the SPE Master Custodial Agreement; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliates provided that (1) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company and such Affiliates and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (2) such assets shall be listed on the Company's own separate balance sheet;
- (B) at all times hold itself out to the public and all other Persons as a legal entity separate from the Member and any other Person;
- (C) have a Board of Directors separate from that of the Member and any other Person;
- (D) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;
- (E) except as contemplated by the Basic Documents, not commingle its assets with assets of any other Person;
- (F) comply with all organizational formalities to maintain its separate existence;
- (G) pay its own liabilities only out of its own funds;
- (H) only engage with its Affiliates and the Member upon terms and

conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties;

- (I) pay the salaries of its own employees, if any;
- (J) not hold out its credit or assets as being available to satisfy the obligations of the Member or its Affiliates;
- (K) allocate fairly and reasonably any overhead for shared office space, if any;
- (L) use separate invoices and checks, if any, except as contemplated by the consolidated billing statement contemplated under the SPE Master Custodial Agreement;
- (M) except as contemplated by the Basic Documents, not pledge its assets for the benefit of any other Person;
- (N) correct any known misunderstanding regarding its separate identity;
- (O) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not require the Member or any Affiliate to make any additional capital contributions to the Company;
- (P) keep minutes of any Board or Member meetings and actions and observe all other Delaware limited liability company formalities; and
- (Q) not acquire any securities of the Member.

Failure of the Company, or any Person on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member, the Manager or the Directors.

(v) So long as any Obligation is outstanding, the Board shall not cause or permit the Company to:

(A) except as contemplated by the Basic Documents, guarantee any obligation of any Person, including any Affiliate;

(B) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 7, the Basic Documents or this Section 9(i);

(C) incur, create or assume any indebtedness other than as expressly permitted under the Basic Documents;

(D) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Basic Documents and may make any advance or loan required or expressly permitted or contemplated to be made pursuant to any provisions of the Basic Documents and permit the same to remain outstanding in accordance with such provisions;

(E) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, division, merger, asset sale or transfer of ownership interests other than such activities as are expressly permitted pursuant to any provision of the Basic Documents; or

(F) form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other).

(j) Manager.

(i) Designation of Manager. The Board shall designate a Manager of the Company. The Manager shall be responsible for the general and active management of the day-to-day business of the Company and shall see that all orders, acts and resolutions of the Board are carried into effect. Subject to Section 9(c) of this Agreement, the Manager may be removed or replaced by the vote of a majority of the Board. The initial Manager of the Company shall continue to be J. Aron.

(ii) Manager as Agent. The Manager, solely to the extent of its powers set forth in this Agreement or otherwise vested in it by action of the Board not inconsistent with this Agreement, is an agent of the Company for the purpose of the Company's business and, subject to the limitations set forth in Section 7, Section 9(d) and Section 9(i), the actions of the Manager taken in accordance with such powers shall bind the Company.

Section 10. Independent Director. As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least one Independent Director who will be appointed by the Member. To the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Company (including the Company's creditors) in acting or otherwise voting on the matters referred to in Section 9(i)(iii) (which duties to the Member and the Company (including the Company's creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in the Company exclusive of (x) all other interests (including, without limitation, all other interests of the Member, (y) the interests of other Affiliates of the Member and the Company and (z) the interests of any group of Affiliates of which the Member or the Company is a part)). Other than as provided in the immediately preceding sentence, the Independent Director shall not have any fiduciary duties to any Member, any Manager or any other Person; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law. No resignation or removal

of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) has accepted his or her appointment as an Independent Director by a written instrument, which may be a counterpart signature page to the Management Agreement, and (ii) has executed a counterpart to this Agreement as required by Section 5(a). In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. Notwithstanding anything to the contrary contained in this Agreement, no Independent Director shall be removed or replaced without Cause and unless the Company provides the Member with no less than three business days' prior written notice of (a) any proposed removal of such Independent Director, and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements for an Independent Director set forth in this Agreement. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

Section 11. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Member nor any Director nor the Manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member, Director or Manager of the Company.

Section 12. Capital Contributions and Subordinated Loan Agreement.<sup>1</sup>

The Member agrees to deliver an updated Schedule B hereto on the date of the Initial Bond Pricing Date, which, in addition to the items currently listed therein, will list (a) the amount of the capital to be contributed by the Member to the Company promptly following the Initial Bond Pricing Date and (b) the amount of a loan to be made by the Member to the Company pursuant to the Subordinated Loan Agreement upon the initial issuance of the Bonds; provided that the Member shall not be required to make any capital contribution or loan to the Company unless the Initial Bond Pricing Date occurs. In accordance with Section 5(c), the Special Member shall not be required to make any capital contributions to the Company.

Section 13. Additional Contributions.

Except as provided in Section 12, the Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time in its discretion. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement accordingly. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and the Special Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member and the Special

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<sup>1</sup> SM NTD: To be finalized consistent with final capitalization structure for LLC.

Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 15. Distributions.

Subject to the limitations set forth in the SPE Master Custodial Agreement, distributions shall be made to the Member at the times and in the aggregate amounts determined by the Manager. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate Section 18-607 of the Act or any other applicable law or any Basic Document.

Section 16. Other Business.

The Member, the Special Member and any Affiliate of the Member or the Special Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 17. Duties, Exculpation, Indemnification.

(a) To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, the parties hereto hereby agree that none of the Member, the Special Member nor any non-Independent Director, Manager, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member or the Special Member (collectively, the "Covered Persons") shall owe any fiduciary duty to any Member or the Company; provided, however, that the foregoing shall not eliminate the duty to comply with the implied contractual covenant of good faith and fair dealing.

(b) The Covered Persons shall not be liable to the Company or any other Person who has an interest in or claim against the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement.

(c) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement; provided, however, that any indemnity under this Section 17 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Member shall not have personal liability

on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 17 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(d) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 17; provided, however, that any reimbursement under this Section 17 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Member shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no reimbursement payment from funds of the Company (as distinct from funds from other sources, such as insurance) under this Section 17 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(e) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(f) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member and the Independent Director to replace such other duties and liabilities of such Covered Person.

(g) The foregoing provisions of this Section 17 shall survive any termination of this Agreement.

#### Section 18. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company, and, if the Member transfers all of its limited liability company interest in the Company pursuant to this Section 18, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the transfer and,

immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation or otherwise in compliance with the Basic Documents shall, without further act, be the Member under this Agreement, and such occurrence shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 19. Resignation.

So long as any Obligation is outstanding, the Member may not resign, unless a Person has agreed to become a member of the Company pursuant to this Section 19 upon the Member's resignation. If the Member is permitted to resign pursuant to this Section 19, an additional member of the Company shall be admitted to the Company, subject to Section 20, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 20. Admission of Additional Members.

One or more additional members of the Company may be admitted to the Company with the written consent of the Member.

Section 21. Dissolution.

(a) Subject to Section 9(i), the Company shall be dissolved, and its affairs shall be wound up, upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act, (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act, or (iii) written consent of the Member following the termination of the other Basic Documents and the satisfaction of the Obligations incurred in connection therewith. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Section 18 and Section 20, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Section 19 and Section 21), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining member of the Company or the Member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause the Member or Special Member, respectively, to

cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member and the Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or a Special Member, or the occurrence of an event that causes the Member or a Special Member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) The Company shall terminate when (i) the Manager determines that all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation has been canceled in the manner required by the Act.

Section 22. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member and the Special Member hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 15 hereof. The interest of the Member in the Company is personal property.

Section 23. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (except as provided in Section 26 and with respect to Covered Persons).

Section 24. Severability of Provisions.

Each provision of this Agreement shall be considered severable and, if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 25. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 26. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Section 7, Section 8, Section 9, Section 10, Section 17, Section 18, Section 19, Section 20, Section 21, Section 23, Section 26 and Section 28, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Director, the Director appointed by the Municipal Issuer, and the Municipal Issuer in accordance with its terms. In addition, the Director appointed by the Municipal Issuer and the Municipal Issuer are intended beneficiaries of this Agreement.

Section 27. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 28. Amendments.

Subject to Section 9(i), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member; provided that (a) this Agreement may not be modified, altered, supplemented or amended in any way that materially limits the rights and responsibilities of the Director appointed by the Municipal Issuer without such Director's prior written consent and (b) so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless the Rating Agency Condition is satisfied except: (i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Agreement, (ii) to insert such provisions clarifying matters or questions arising under this Agreement as are necessary or desirable and are not contrary to or inconsistent with this Agreement or (iii) to correct or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents (provided that, notwithstanding the foregoing clauses (i) – (iii), so long as any Obligation is outstanding Section 7, Section 9 and Section 10 of this Agreement may not be modified, altered, supplemented or amended in any way unless the Rating Agency Condition is satisfied).

Section 29. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 30. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto, (c) in the case of the Independent Director and the Director appointed

by the Municipal Issuer, to their addresses as listed in the Management Agreement and (d) in the case of any of the foregoing, at such other address as may be designated by written notice to the other parties. Notwithstanding the foregoing, a party may at any time notify the other 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.

Section 31. Schedules.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amended and Restated Limited Liability Company Agreement as of the date first written above.

MEMBER:

J. ARON & COMPANY LLC, a New York limited liability company

By: \_\_\_\_\_

Name:

Title:

INDEPENDENT DIRECTOR:

\_\_\_\_\_  
Name: Orlando C. Figueroa

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Affiliate Funding Recipient” means (i) The Goldman Sachs Group, Inc. and (ii) any other Affiliate of the Member that proposes to enter into a replacement Funding Agreement with the Company for a subsequent Reset Period.

“Agreement” means this Amended and Restated Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Available Discount” has the meaning set forth in the Re-Pricing Agreement.

“Bankruptcy” means, with respect to any Person, if (i) an involuntary case or other proceeding shall be commenced against such Person 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 shall be entered and continued unstayed and in effect, in any such event, for a period of 60 days; or (ii) such Person shall commence 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 a bankrupt or insolvent, or shall consent 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, or if it shall file a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or consent 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 such Person or any substantial part of its property, or shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“Basic Documents” means this Agreement, the Management Agreement, the Prepaid Transaction Documents and all documents and certificates contemplated thereby or delivered in connection therewith.

“Board” or “Board of Directors” means the Board of Directors of the Company.

“Bond Indenture” has the meaning set forth in Section 7(a)(i).

“Bond Pricing Date” has the meaning set forth in the Re-Pricing Agreement.

“Bonds” has the meaning set forth in the Bond Indenture.

“Cause” means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of, or gross negligence with respect to, such Independent Director’s duties, (ii) such Independent Director has engaged in or has been charged with or has been indicted for or convicted of any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) such Independent Director has breached its implied contractual covenant of good faith and fair dealing, (iv) there is a material increase in the fees charged by such Independent Director, or a material change to such Independent Director’s terms of service, (v) such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (vi) such Independent Director no longer meets the definition of Independent Director.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on [\_\_\_\_], 2022, as amended or amended and restated from time to time.

“Company” means Aron Energy Prepay 14 LLC, a Delaware limited liability company.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 17(a).

“Directors” means the Persons appointed to the Board of Directors from time to time as provided in Section 9(a), including the Independent Director, in their capacity as directors of the Company. A Director is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

“Funding Agreement” has the meaning set forth in Section 7(a)(v).

“Funding Exclusivity Period” means, for any new Reset Period, the period of time, if any, commencing on the first day after the end of the Funding Shopping Second Period and ending at the end of such Re-pricing Period.

“Funding Recipient” has the meaning set forth in the Master Power Supply Agreement.

“Funding Shopping First Period” means, for any new Reset Period, the period of time commencing as of the beginning of the Re-pricing Period for such Reset Period and ending 121 days prior to the end of such Re-Pricing Period.

“Funding Shopping Second Period” means, for any new Reset Period, the period of time, if any, commencing on the day after the end of the Funding Shopping First Period and ending 61 days prior to the end of the Re-pricing Period.

“Electricity Sale and Service Agreement” has the meaning set forth in Section 7(a)(iii).

“Independent Director” means a natural person selected by the Company (a) with prior experience as an independent director, independent manager or independent member, (b) with at least three (3) years of employment experience, (c) who is provided by a Nationally Recognized Service Company, and (d) who is duly appointed as an Independent Director and is not, will not be while serving as Independent Director (except pursuant to an express provision in this Agreement providing for the appointment of such Independent Director to become a Special Member), and shall not have been at any time during the preceding five years, any of the following:

(i) a stockholder, director (other than an independent director), officer, employee, partner, attorney or counsel of the Company, any Affiliate of the Company or any direct or indirect parent of the Company;

(ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of the Company;

(iii) a Person or other entity Controlling or under common Control with any such stockholder, partner, customer, supplier or other Person described in clause (i) or clause (ii) above; or

(iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person described in clause (i) or clause (ii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being an independent director of a “special purpose entity” affiliated with the Company shall be qualified to serve as an independent director of the Company, provided that the fees that such individual earns from serving as Independent Director of Affiliates of the Company in any given year constitute in the aggregate less than 5% of such individual’s annual income for that year.

A natural person who satisfies the foregoing definition other than clause (ii) shall not be disqualified from serving as an Independent Director of the Company if such individual is an independent director, independent manager or special manager provided by a Nationally

Recognized Service Company that provides professional independent directors, independent managers and special managers and also provides other corporate services in the ordinary course of its business.

“Initial Funding Recipient” means [\_\_\_\_].

“J. Aron” means J. Aron & Company LLC, a New York limited liability company.

“Ledger Event” has the meaning set forth in the Master Power Supply Agreement.

“Management Agreement” means the agreement of the Directors in the form attached hereto as Schedule C. The Management Agreement shall be deemed incorporated into, and a part of, this Agreement.

“Manager” shall mean the Person elected by the Board of Directors pursuant to Section 9(j) of this Agreement.

“Master Power Supply Agreement” has the meaning set forth in Section 7(a)(i).

“Material Action” means to consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file, or consent to, a petition seeking reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company’s inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company.

“Member” means J. Aron, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term “Member” shall not include the Special Member.

“Municipal Issuer” has the meaning set forth in Section 7(a)(i).

“Nationally Recognized Service Company” means any of Citadel SPV (USA) LLC, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Services, United Corporate Services, Inc., Independent Member Services LLC, or such other nationally recognized company that provides independent director, independent manager or independent member services, in each case that is not an Affiliate of the Company and that provides professional independent directors and other corporate services in the ordinary course of its business.

“Obligations” means the liabilities and obligations of the Company under or in connection with this Agreement, the other Basic Documents or any related document in effect as of any date of determination.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Prepaid Transaction Documents” has the meaning set forth in Section 7(a)(x).

“Product Delivery Termination Date” has the meaning set forth in the Master Power Supply Agreement.

“Qualified Firm Offer” has the meaning set forth in the Re-Pricing Agreement.

“Qualified Funding Recipient” means, for any Reset Period for which a Funding Agreement will be executed or extended, (a) any Affiliate Funding Recipient, (b) the Initial Funding Recipient and (c) any other Person that (i) is rated by (or has a guarantor rated by) Moody’s Investors Service or Standard & Poor’s Ratings Service, (ii) has a rating (or a guarantor with a rating) of at least “Baa1” by Moody’s Investors Service, Inc., “BBB+” by Fitch Ratings, Inc., and “BBB+” by S&P Global Ratings to the extent rated by such rating agencies, (iii) has capital stock, surplus and undivided earnings aggregating at least \$1,000,000,000 or a guarantor with capital stock, surplus and undivided earnings aggregating at least \$1,000,000,000, (iv) is able to satisfy the Member’s internal requirements as they relate to “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, (v) agrees to deliver an unqualified opinion of counsel in a form acceptable to the Member that the proposed Funding Agreement is not a security, and (vi) agrees to enter into a Funding Agreement that provides no less favorable terms than the Funding Agreement with the Initial Funding Recipient and which Funding Agreement must require the Funding Recipient (A) to pay liquidated damages to the Member reflecting any lost value (I) of the Member’s equity or (II) on any Subordinated Loan Agreement caused by any event of default, acceleration event or similar circumstances affecting the Funding Recipient under the Funding Agreement, and (B) to collateralize its obligations to pay such liquidated damages upon a credit downgrade upon terms and in an amount that are acceptable to the Member in its sole discretion, unless such requirements are waived by the Member in its sole discretion.

“Qualified Potential Offer” has the meaning set forth in the Re-Pricing Agreement.

“Rating Agency” has the meaning assigned to that term in the Basic Documents.

“Rating Agency Condition” means that the Member has delivered a Rating Confirmation (as defined in the Bond Indenture) to the Municipal Issuer.

“Re-Pricing Agreement” has the meaning set forth in Section 7(a)(ii).

“Re-pricing Period” has the meaning set forth in the Re-Pricing Agreement.

“Reset Period” has the meaning set forth in the Re-Pricing Agreement.

“Special Member” means, upon such Person’s admission to the Company as a member of the Company pursuant to Section 5(c), a Person acting as Independent Director, in such Person’s

capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

“Subordinated Loan Agreement” has the meaning set forth in Section 7(a)(iv).

“Third Party Funding Recipient” means any Qualified Funding Recipient that proposes to enter into a Funding Agreement with the Company other than an Affiliate Funding Recipient.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

**SCHEDULE B**

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Membership Interest
J. Aron & Company LLC	200 West Street New York, NY 10282	\$[_____]	100%

**SCHEDULE C**

**MANAGEMENT AGREEMENT**

[\_\_\_\_], 2022

J. Aron & Company LLC  
200 West Street  
New York, NY 10282  
Email: gs-prepay-notices@gs.com

Citadel SPV  
85 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Attention: Orlando C. Figueroa  
E-mail: orlando.figueroa@citadelspv.com and dewen.tarn@citadelspv.com

California Community Choice Financing Authority  
[\_\_\_\_]  
[\_\_\_\_]

Re: Management Agreement -- Aron Energy Prepay 14 LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned Persons, who have been designated as directors of Aron Energy Prepay 14 LLC, a Delaware limited liability company (the “Company”), in accordance with the Amended and Restated Limited Liability Company Agreement of the Company, dated as of [\_\_\_\_], 2022, as it may be amended or restated from time to time (the “LLC Agreement”), hereby agree as follows:

1. Each of the undersigned accepts such Person’s rights and authority as a Director under the LLC Agreement and agrees to perform and discharge such Person’s duties and obligations as a Director under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person’s successor as a Director is designated or until such Person’s resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a “manager” of the Company within the meaning of the Delaware Limited Liability Company Act.

2. So long as any Obligation is outstanding, each of the undersigned agrees, solely in its capacity as a creditor of the Company on account of any indemnification or other payment owing to the undersigned by the Company, not to acquiesce, petition or otherwise invoke or cause the Company to invoke the process of any court or governmental authority for the purpose of commencing or sustaining a case against the Company under any federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian,

sequestrator or other similar official of the Company or any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company.

3. J. Aron is the Manager of the Company and shall be responsible for the general and active management of the day-to-day business of the Company and shall see that all orders, acts and resolutions of the Board are carried into effect. J. Aron as Manager pursuant to the Agreement is authorized to execute and deliver on behalf of the Company the Basic Documents.

4. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

This Management Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Management Agreement and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

\_\_\_\_\_

Name: Kenan Arkan, Director Appointed by the Member

\_\_\_\_\_

Name: Orlando C. Figueroa, Independent Director

\_\_\_\_\_

Name: [\_\_\_\_], Director Appointed by the Municipal Issuer

**SCHEDULE D**

DIRECTORS

1. Kenan Arkan, as appointed by J. Aron
2. Orlando C. Figueroa, as the Independent Director
3. [\_\_\_\_], as appointed by the Municipal Issuer

**DRAFT**

CLEAN ENERGY PURCHASE CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

CLEAN POWER ALLIANCE

Dated as of [\_\_\_\_], 2022

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I. DEFINITIONS .....</b>	<b>2</b>
Section 1.1    Defined Terms .....	2
Section 1.2    Definitions; Interpretation.....	12
<b>ARTICLE II. DELIVERY PERIOD; NATURE OF CLEAN ENERGY PROJECT;                   CONDITION PRECEDENT .....</b>	<b>12</b>
Section 2.1    Delivery Period .....	12
Section 2.2    Nature of Clean Energy Project.....	12
Section 2.3    Condition Precedent.....	13
Section 2.4    Pledge of this Agreement.....	13
<b>ARTICLE III. SALE AND PURCHASE; PRICING.....</b>	<b>13</b>
Section 3.1    Sale and Purchase of Product.....	13
Section 3.2    Purchaser Payments .....	13
Section 3.3    Limited Obligation to Take Base Quantities .....	14
Section 3.4    Annual Refund.....	14
Section 3.5    Reset Period Remarketing.....	14
<b>ARTICLE IV. FAILURE TO SCHEDULE PRODUCT .....</b>	<b>15</b>
Section 4.1    Issuer’s Failure to Schedule Base Quantity (Not Due to Force Majeure).....	15
Section 4.2    Purchaser’s Failure to Schedule or Take Base Quantities (Not Due to Force Majeure).....	16
Section 4.3    Assigned Product .....	16
Section 4.4    Sole Remedies.....	16
<b>ARTICLE V. DELIVERY POINTS; SCHEDULING .....</b>	<b>16</b>
Section 5.1    Delivery Points.....	16
Section 5.2    Transmission and Scheduling .....	17
Section 5.3    Title and Risk of Loss .....	17
Section 5.4    PCC1 Product and.....	17

Section 5.5	Communications Protocol.....	20
Section 5.6	Deliveries within CAISO or another Balancing Authority.....	20
Section 5.7	Assigned Products.....	20
<b>ARTICLE VI. ASSIGNMENT OF POWER PURCHASE AGREEMENTS.....</b>		<b>20</b>
Section 6.1	Assignments Generally .....	20
Section 6.2	Failure to Obtain .....	21
Section 6.3	Adjustments to Base Quantities and CPA Fixed Payment Schedule.....	21
Section 6.4	Tracking of Assigned Energy Value.....	22
Section 6.5	J. Aron Non-Payment to APC Party. ....	23
<b>ARTICLE VII. USE OF PRODUCT .....</b>		<b>23</b>
Section 7.1	Tax Exempt Status of the Bonds.....	23
Section 7.2	Priority Products .....	24
Section 7.3	Assistance with Sales to Third Parties.....	24
Section 7.4	Qualifying Use.....	24
Section 7.5	Remediation .....	24
Section 7.6	Remediation; Ledger Entries; Redemption.....	25
<b>ARTICLE VIII. REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS .....</b>		<b>25</b>
Section 8.1	Representations and Warranties of Issuer.....	25
Section 8.2	Warranty of Title.....	27
Section 8.3	Disclaimer of Warranties .....	27
Section 8.4	Continuing Disclosure .....	27
<b>ARTICLE IX. TAXES.....</b>		<b>27</b>
<b>ARTICLE X. JURISDICTION; WAIVER OF JURY TRIAL .....</b>		<b>27</b>
Section 10.1	Consent to Jurisdiction.....	27
Section 10.2	Waiver of Jury Trial.....	28
<b>ARTICLE XI. FORCE MAJEURE .....</b>		<b>28</b>
Section 11.1	Applicability of Force Majeure.....	28
Section 11.2	Settlement of Labor Disputes.....	29

**ARTICLE XII. GOVERNMENTAL RULES AND REGULATIONS.....29**

    Section 12.1    Compliance with Laws .....29

    Section 12.2    Contests.....29

    Section 12.3    Defense of Agreement .....29

**ARTICLE XIII. ASSIGNMENT .....29**

**ARTICLE XIV. PAYMENTS.....30**

    Section 14.1    Monthly Statements .....30

    Section 14.2    Payments .....31

    Section 14.3    Payment of Disputed Amounts .....31

    Section 14.4    Late Payment .....31

    Section 14.5    Audit; Adjustments .....31

    Section 14.6    Netting; No Set-Off.....32

    Section 14.7    Rate Covenant.....32

**ARTICLE XV. [RESERVED] .....33**

**ARTICLE XVI. NOTICES .....33**

**ARTICLE XVII. DEFAULT; REMEDIES; TERMINATION.....33**

    Section 17.1    Issuer Default .....33

    Section 17.2    Purchaser Default.....33

    Section 17.3    Remedies Upon Default.....34

    Section 17.4    Termination of Master Power Supply Agreement .....35

    Section 17.5    Limitation on Damages.....36

**ARTICLE XVIII. MISCELLANEOUS.....36**

    Section 18.1    Indemnification Procedure.....36

    Section 18.2    Deliveries .....37

    Section 18.3    Entirety; Amendments .....37

    Section 18.4    Governing Law .....37

    Section 18.5    Non-Waiver.....37

    Section 18.6    Severability .....37

    Section 18.7    Exhibits .....37

Section 18.8	Winding Up Arrangements .....	38
Section 18.9	Relationship of Parties .....	38
Section 18.10	Immunity .....	38
Section 18.11	Rates and Indices .....	38
Section 18.12	Limitation of Liability.....	38
Section 18.13	Counterparts.....	38
Section 18.14	Third Party Beneficiaries; Rights of Trustee .....	39
Section 18.15	No Recourse to Members of Purchaser .....	39
Section 18.16	Waiver of Defenses.....	39
Section 18.17	Rate Changes .....	39

Exhibit A-1 — Base Quantities; Base Delivery Point; Commodity Reference Prices

Exhibit A-2 — Initial Assigned Rights and Obligations

Exhibit A-3 — CPA Fixed Payment Schedule

Exhibit B — Notices

Exhibit C — Remarketing Election Notice

Exhibit D — Federal Tax Certificate

Exhibit E — Purchaser’s Legal Opinion

Exhibit F — Assignment of Assignable Power Contracts

Exhibit G — Communications Protocol

Exhibit H — Pricing and Other Terms

## CLEAN ENERGY PURCHASE CONTRACT

This Clean Energy Purchase Contract (this “Agreement”) is made and entered into as of [\_\_\_\_], 2022 (the “Execution Date”), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and Clean Power Alliance of Southern California, a California joint powers authority (“Purchaser”).

### WITNESSETH:

WHEREAS, Issuer has planned and developed a project to acquire long-term supplies of Product from Aron Energy Prepay [\_\_] LLC, a Delaware limited liability company (“Prepay LLC”) and a wholly-owned subsidiary of The Goldman Sachs Group, Inc., pursuant to a Master Power Supply Agreement, dated as of [\_\_\_\_], 2022 (the “Master Power Supply Agreement”), to meet a portion of the Product supply requirements of Purchaser through a discounted clean energy purchase product (the “Clean Energy Project”);

WHEREAS, Purchaser desires to enter into an agreement with Issuer for the purchase of Product acquired by the Issuer under the Clean Energy Project;

WHEREAS, Issuer will finance its payment for Product under, and the other costs of, the Clean Energy Project by issuing Bonds;

WHEREAS, Purchaser is a joint powers authority and a community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members for the transmission, distribution, sale, and delivery of Product to retail electric consumers within its service area;

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

WHEREAS, concurrently herewith, Purchaser has assigned to J. Aron (as defined below) certain Assigned Rights and Obligations (as defined below), including the right to receive Assigned Product (as defined below), which Assigned Product will be resold to Prepay LLC under the Electricity Sale and Service Agreement, then resold to Issuer under the Master Power Supply Agreement and then resold to Purchaser hereunder; and

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

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Issuer and Purchaser (the “Parties” hereto; each is a “Party”) agree as follows:

## DEFINITIONS

Defined Terms. The following 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:

“Administrative Fee” means the amount per MWh specified as such in Exhibit H.

“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.

“Alternate Delivery Point” has the meaning specified in 0.

“Annual Refund” means the annual refund, if any, to be provided to the Purchaser and calculated pursuant to the procedures specified in 0.

“APC Contract Price” has the meaning specified in Exhibit F.

“APC Party” has the meaning specified in Exhibit F.

“Applicable Project” has the meaning specified in Exhibit F.

“Assignable Power Contract” has the meaning specified in 0.

“Assigned Delivered Value” means, for any Month and each Assigned PPA, the value of the Assigned Product that is Scheduled and delivered during such Month pursuant to such Assigned PPA, with such value being determined using the applicable APC Contract Price for such Assigned Product.

“Assigned Delivered Value Excess” has the meaning specified in 0.

“Assigned Delivered Value Shortfall” has the meaning specified in 0.

“Assigned Delivery Point” means, with respect to any Assigned Energy, the Assigned Delivery Point as set forth in the applicable Assignment Schedule for such Assigned Energy.

“Assigned Discounted Product” means, for any Month, the lesser of (i) the total quantity of Assigned Product (in MWh) delivered hereunder in such Month and (ii) the aggregate Assigned Prepay Quantities for such Month.

“Assigned Energy” means any Energy, including Energy associated with PCC1 Product and Long-Term PCC1 Product, to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“Assigned PAYGO Product” means, for any Month, the amount, if any, by which the total quantity of Assigned Product delivered hereunder in such Month exceeds the aggregate Assigned Discounted Product for such Month.

“Assigned PPA” means any power purchase agreement that is assigned pursuant to an Assignment Agreement in accordance with the terms of this Agreement.

“Assigned Prepay Quantity” has the meaning specified in Exhibit F.

“Assigned Prepay Value” means, for any Month and each Assignment Schedule, the Assigned Prepay Quantity for such Month multiplied by the applicable APC Contract Price.

“Assigned Product” means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other Product included on an Assignment Schedule, subject to the limitations for such other Product set forth in Exhibit F.

“Assigned Quantity” means, with respect to each Month during an Assignment Period, the quantity of Assigned Energy (in MWh) delivered in connection with the Assigned Product during such Month.

“Assigned RECs” means any RECs associated with PCC1 Product or Long-Term PCC1 Product to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” has the meaning specified in 0.

“Assigned Value Shortfall Tracking Account” has the meaning specified in 0.

“Assigned Value Shortfall Tracking Account Overage” has the meaning specified in 0.

“Assignment Agreement” means, for any Assigned Rights and Obligations, an agreement among Purchaser, J. Aron and the APC Party, approved by Issuer, in the form attached hereto as Annex II to Exhibit F (with such changes thereto as may be mutually agreed upon by Purchaser, J. Aron, the APC Party, and Issuer, each in its sole discretion).

“Assignment Period” for any Assigned Rights and Obligations has the meaning specified in the applicable Assignment Agreement.

“Assignment Schedule” has the meaning specified in Exhibit F.

“Available Discount Percentage” has the meaning specified in the Re-Pricing Agreement. For the avoidance of doubt, the “Available Discount Percentage” under the Re-Pricing Agreement includes the Monthly Discount Percentage, as well as additional discounting expected to be made available through the Annual Refund.

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

“Base Delivery Point” has the meaning specified in 0.

“Base Product” means Firm (LD) Energy delivered to the Base Delivery Point.

“Base Quantity” means, with respect to each Delivery Hour during the Delivery Period, the Base Unadjusted Quantity for such Delivery Hour less the Base Quantity Reduction for such Delivery Hour, each as set forth on Exhibit A-1, as Exhibit A-1 may be revised pursuant to 0.

“Base Quantity Reduction” means, with respect to each Delivery Hour during the Delivery Period, the “Base Quantity Reduction” of Base Product (in MWh) set forth for such Delivery Hour on Exhibit A-1, as Exhibit A-1 may be revised pursuant to 0.

“Base Unadjusted Quantity” means, with respect to each Delivery Hour during the Delivery Period, the “Base Unadjusted Quantity” (in MWh) set forth for such Delivery Hour on Exhibit A-1.

“Bond Closing Date” means the date on which Bonds are first 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, 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 generally in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any day excluded from “Business Day” as therein defined, 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.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“Claiming Party” has the meaning specified in 0.

“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.

“Commodity Reference Price” means either (i) the Day-Ahead Market Price, or (ii) the Real-Time Market Price, as applicable.

“Contract Price” means (i) with respect to the Base Product and any Delivery Hour, (A) the Day-Ahead Market Price for such Delivery Hour at the Base Delivery Point less (B) the product of the Fixed Price multiplied by the Monthly Discount Percentage, (ii) with respect to Assigned Discounted Product, (A) the applicable APC Contract Price(s) multiplied by (B) the result of 100% less the Monthly Discount Percentage, and (iii) with respect to Assigned PAYGO Product, the APC Contract Price(s).

“CPA Custodial Agreement” means that certain Custodial Agreement, dated as of the date hereof, by and among Purchaser, Issuer, J. Aron, Prepay LLC and the CPA Custodian.

“CPA Custodian” means [\_\_\_\_], a [\_\_\_\_].

“CPA Fixed Payment” has the meaning specified in 0.

“CPA Gross Payment” has the meaning specified in the CPA Custodial Agreement.

“Day” means each period of 24 consecutive Hours commencing at the Hour ending at 01:00 (LPT) through the Hour ending at 24:00 (LPT).

“Day-Ahead Market Price” has the meaning specified on Exhibit A-1 for each Delivery Point.

“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 Hour” has the meaning specified in Exhibit A-1.

“Delivery Period” has the meaning specified in Exhibit H.

“Delivery Point” means the Base Delivery Point or an Assigned Delivery Point, as applicable.

“Disqualified Sale Proceeds” has the meaning specified in 0.

“Disqualified Sale Units” has the meaning specified in 0.

“Electricity Sale and Service Agreement” has the meaning specified in the Master Power Supply Agreement.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

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

“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 any Assignment Period or J. Aron EPS Energy Period.

“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 or any successor thereto.

“Firm (LD)” means, with respect to a Party’s obligation to sell and deliver or purchase and receive, that such Party’s liability for the failure to meet such obligation shall only be excused to the extent that, and for the period during which, such performance is prevented by Force Majeure, and that in the absence of Force Majeure, the Party to which performance of such obligation is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Q.

“Fixed Price” means \$[\_\_\_\_\_] /MWh, which is the fixed price under the Buyer Swap (as defined in the Master Power Supply Agreement).

“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 date this Agreement was executed, 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; provided that, for the avoidance of doubt, the declaration of “Force Majeure” by an APC Party under a PPA (as defined in an Assignment Agreement) shall constitute Force Majeure hereunder. Force Majeure shall include, provided the criteria in the first sentence are met, riot, insurrection, war, labor dispute, natural disaster, vandalism, terrorism, sabotage. Force Majeure shall not be based on (i) the loss of Purchaser’s markets; (ii) Purchaser’s inability economically to use or resell the Product purchased hereunder; (iii) the delay, loss or failure of Issuer’s supply; or (iv) Issuer’s ability to sell the Product 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 (x) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the applicable Delivery Point and (y) 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 a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Force Majeure invoked by Prepay LLC under the Master Power Supply Agreement shall constitute Force Majeure in respect of Issuer hereunder to the extent the conditions set forth above have been satisfied with respect to Prepay LLC.

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

“Governmental Approval” means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, registration, filing, giving of notice to, decree, declaration of or regulation by any Government Agency relating to the valid execution,

delivery or performance of this Agreement or the consummation of any of the transactions contemplated hereby.

“Hour” means the 60-minute period commencing at 00:00 (LPT) on first Day of the Delivery Period and ending at 01:00 (LPT) on the first Day of the Delivery Period, and each 60-minute interval thereafter.

“Initial Assigned Rights and Obligations” means the Assigned Rights and Obligations set forth in Exhibit A-2 hereto as of the date hereof.

“Initial Reset Period” has the meaning specified in Exhibit H.

“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 0.

“ISTs” has the meaning specified in 0.

“J. Aron” means J. Aron & Company LLC, a New York limited liability company, and its permitted successors and assigns under an Assignment Agreement.

“J. Aron EPS Energy Period” has the meaning specified in 0.

“J. Aron Fixed Payment” has the meaning specified in the CPA Custodial Agreement.

“J. Aron PAYGO Payment” has the meaning specified in the CPA Custodial Agreement.

“J. Aron Prepay Payment” has the meaning specified in the CPA Custodial Agreement.

“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 that certain Joint Powers Agreement dated December 19, 2008, as amended from time to time, under which Purchaser is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any statute, law, rule or regulation or any written judicial or administrative decision, ruling or interpretation with respect thereto or 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 during the term of this Agreement.

“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 J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“LPT” means the local prevailing time then in effect in the State of California.

“Mandatory Purchase Date” has the meaning specified in the Bond Indenture.

“Master Power Supply Agreement” has the meaning specified in the recitals.

“Minimum Discount Percentage” has the meaning specified in Exhibit H.

“Month” means a period beginning on the first Day of a calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

“Monthly Discount Percentage” has the meaning specified in Exhibit H.

“Municipal Utility” means any Person that (i) is a “governmental person” as defined in the implementing regulations under Section 141 of the Code and any successor provision, (ii) owns either or both a gas distribution utility or an electric distribution utility (or provides natural gas or electricity at wholesale to, or that is sold to entities that provide natural gas or electricity at wholesale to, governmental Persons that own such utilities), and (iii) agrees in writing to use the gas or electricity purchased by it (or cause such gas or electricity to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

“MWh” means megawatt-hour.

“Non-Priority Products” means any Products that are not Priority Products.

“Party” has the meaning specified in the preamble.

“PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

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

“Portfolio Content Category 1” or “PCC1” 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 0.

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

“Primary Delivery Point” has the meaning specified in 0.

“Priority Products” means the Base Quantity and Assigned Products to be purchased by Purchaser under this Agreement, together with Products that (i) Purchaser is obligated to take under a long-term agreement, which Products either have been purchased by Purchaser or a joint action agency pursuant to a long-term prepaid power purchase agreement using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes, or (ii) with respect to Energy, Energy that is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes (provided that, for the avoidance of doubt, Priority Products 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).

“Product” means Energy and, to the extent included on an Assignment Schedule, associated RECs, capacity or other products related to the foregoing; *provided* that the inclusion of any Product on an Assignment Schedule is subject to the limitation set forth in Exhibit F.

“Purchaser” has the meaning specified in the preamble.

“Purchaser Default” has the meaning specified in 0.

“Qualifying Use Requirements” means, with respect to any Product delivered under this Agreement, such Product 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.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the Bond Closing Date (as defined in the Master Power Supply Agreement), by and between Prepay LLC and Issuer.

“Real-Time Market Price” has the meaning specified on Exhibit A-1 for each Delivery Point.

“Remarketing Election Deadline” means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice as set forth in the applicable Reset Period Notice.

“Remarketing Election Notice” has the meaning specified in 0.

“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.

“Replacement Assigned Rights and Obligations” means any Assigned Rights and Obligations other than the Initial Assigned Rights and Obligations.

“Replacement Price” means, with respect to any Shortfall Quantity of Base Quantities, the price at which Purchaser, acting in a Commercially Reasonable manner, purchases at the applicable Delivery Point Replacement Product for such Shortfall Quantity, plus (i) costs reasonably incurred by Purchaser in purchasing Replacement Product, and (ii) additional transmission charges, if any, reasonably incurred by Purchaser to the applicable Delivery Point, or at Purchaser’s option, the market price at the Delivery Point for such Product not delivered as determined by Purchaser in a Commercially Reasonable manner. The Replacement Price for any Shortfall Quantity shall not include any administrative or other internal costs incurred by Purchaser and shall be limited to a price that is Commercially Reasonable with respect to the timing and manner of purchase. In no event shall the Replacement Price include any penalties, ratcheted demand or similar charges, nor shall Purchaser be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Issuer’s liability.

“Replacement Product” means any Energy purchased by Purchaser to replace any Shortfall Quantity at the Delivery Point where such Shortfall Quantity occurred; provided that such Energy is purchased for delivery in the Delivery Hour to which such Shortfall Quantity relates.

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

“Reset Period Notice” has the meaning specified in 0.

“RPS Law” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“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 and type of Product to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

“Shortfall Quantity” has the meaning specified in 0.

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

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

“Utility Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of Purchaser’s electric system, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, or other moneys derived by the Purchaser from the sale, furnishing and supplying of the electric capacity or energy or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Purchaser’s electric system, (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys to the extent that the use of such earnings and income is limited to Purchaser’s electric system by or pursuant to law, (3) deferred revenues and moneys maintained in the Purchaser’s operating

reserve fund and (4) such other income, charges, revenue or moneys maintained in reserves as the Purchaser may specify in a written order of the Purchaser filed with the Issuer, but excluding (A) in all cases customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Purchaser; and (B) such other income, charges, revenue or moneys as the Purchaser may specify in a written order of the Purchaser filed with the Issuer, provided that such written order of the Purchaser confirms that, following the filing of such written order of the Purchaser, (i) the requirements of 0 shall be satisfied; and (ii) the income, charges, revenue or moneys specified in such written order of the Purchaser shall be accounted for separately from the "Utility Revenues" as defined herein

"Voided Remarketing Election Notice" has the meaning specified in 0.

"Western EIM" has the meaning ascribed to "Energy Imbalance Market (EIM)" under the CAISO Tariff.

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

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 broadest scope of such general statement, term or matter. 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.

## **DELIVERY PERIOD; NATURE OF CLEAN ENERGY PROJECT; CONDITION PRECEDENT**

Delivery Period. Subject to 0, delivery of Product by Issuer to Purchaser shall commence at the beginning of the Delivery Period and, except for any Reset Period for which a Remarketing Election Notice is in effect as provided in 0, shall continue throughout the Delivery Period.

Nature of Clean Energy Project. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Product to Purchaser under this Agreement exclusively through its purchase

of Product from Prepay LLC pursuant to the Master Power Supply Agreement and that Issuer is financing its purchase of such supplies through the issuance of the Bonds.

Condition Precedent. Notwithstanding anything to the contrary herein, commencement of deliveries and the rights and obligations of Issuer and Purchaser hereunder are subject to the condition precedent that Issuer shall have entered into the Master Power Supply Agreement and shall have issued the Bonds.

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.

### **SALE AND PURCHASE; PRICING**

Sale and Purchase of Product. Issuer shall sell and deliver or cause to be delivered to Purchaser, and Purchaser shall purchase and receive from Issuer, the applicable Product in the quantities and at the times and subject to the terms and conditions set forth in this Agreement. The quantities of Product to be sold and purchased and delivered and received pursuant to the terms and conditions set forth in this Agreement shall be equal to (a) the Base Quantity, if any, for each Delivery Hour and (b) the Assigned Quantity delivered to J. Aron in each Month of the Delivery Period pursuant to the Assignment Agreements.

#### Purchaser Payments.

For each Month for which an EPS Energy Period is in effect at the start of such Month:

Purchaser shall pay Issuer the Contract Price multiplied by the Assigned Prepay Quantities regardless of whether such Assigned Prepay Quantities are delivered (such amount, the "CPA Fixed Payment") as set forth on Exhibit A-3); and

Pursuant to the terms of the CPA Custodial Agreement, Purchaser shall owe a separate CPA Gross Payment for each Assigned PPA consistent with the terms of the CPA Custodial Agreement, and, upon satisfying its obligations under the CPA Custodial Agreement in respect of such amount (after taking into consideration any PPA Seller Payment Obligation (as such term is defined in the CPA Custodial Agreement) credited to CPA in respect thereof), any portion of such amount attributable to Assigned PAYGO Product shall be deemed to be paid by Purchaser to the applicable APC Party on behalf of J. Aron and shall satisfy the obligations of the respective parties under each of the Electricity Sale and Service Agreement, the Master Power Supply Agreement, this Agreement and the applicable Assignment Agreement for such Assigned PAYGO Product.

To the extent that Base Quantities are delivered hereunder in any Month, Purchaser shall pay Issuer the Contract Price multiplied by the Base Quantities actually delivered.

The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

Limited Obligation to Take Base Quantities. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Quantities hereunder except in the circumstances specified in 0, and Issuer, with respect to any Base Quantities that otherwise would be delivered hereunder, shall cause Prepay LLC to remarket such Base Quantities pursuant to the provisions of Exhibit C to the Master Power Supply Agreement.

Annual Refund. In addition to any Monthly Discount Percentage applied to Energy Scheduled hereunder, Issuer shall credit such Annual Refund to Purchaser as may be available for distribution by Issuer pursuant to Section 5.10 of the Bond Indenture, subject to the provisions of this 0. Such Annual Refund, if any, shall be credited to the next amount due from Purchaser following the release of funds for such purpose to Issuer under the terms of the Bond Indenture. In determining the amount of such Annual Refund, if any, to be credited to Purchaser, Issuer may reserve such funds (i) as may be required under the terms of the Bond Indenture or (ii) with the prior written consent of Purchaser (a) to fund or maintain the Minimum Discount Percentage for any future Reset Period, (b) to fund or maintain any interest rate stabilization or working capital reserve, (c) to reserve or account for unfunded liabilities and expenses or (d) for other costs of the Clean Energy Project.

Reset Period Remarketing.

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

Remarketing Election. If the Reset Period Notice (or any update thereto) for any Reset Period indicates that the estimated Available Discount Percentage specified in such notice is not at least equal to the Minimum Discount Percentage for such 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 the Assignment Agreements to be terminated and all Base Quantities with respect to such Reset Period to be remarketed; provided, however, if the actual Available Discount Percentage, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount Percentage, then Issuer may, in its sole discretion, elect by written notice (a “Voided Remarketing Election Notice”) to Purchaser to treat such Remarketing Election Notice as void. If Purchaser issues a valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) in accordance with this Section 3.5(b) for any Reset Period, then Purchaser shall have no rights or obligations to receive any Product hereunder during such Reset Period or to receive any Annual Refund attributable to such Reset Period.

Final Determination of Available Discount Percentage. The Parties acknowledge and agree that the final Available Discount Percentage for any Reset Period following the Initial Reset Period will be determined on the Re-Pricing Date (as defined in the Re-

Pricing Agreement) for such Reset Period, and that such Available Discount Percentage may differ from the estimate or estimates of such Available Discount Percentage last provided to Purchaser prior to the Remarketing Election Deadline for such Reset Period; provided that the Available Discount Percentage for any Reset Period will not be less than the lower of (i) the last estimated Available Discount Percentage set forth in the Reset Period Notice for such Reset Period (or any update thereof) sent to Purchaser by Issuer and (ii) the Minimum Discount Percentage for Reset Period.

Obligations Following a Remarketing Election. Notwithstanding the issuance of any Remarketing Election Notice for a Reset Period, Purchaser shall not make any new commitment to purchase Priority Products 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 Products (including its obligation to purchase Priority Products hereunder) to exceed Purchaser's expected aggregate requirements for Products that will be used (i) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (ii) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code. Unless Purchaser issues a new Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any subsequent Reset Period in accordance with this 0, Purchaser and J. Aron will cooperate in good faith and exercise Commercially Reasonable Efforts to locate EPS Compliant Energy for redelivery hereunder in any such Reset Period.

## FAILURE TO SCHEDULE PRODUCT

### Issuer's Failure to Schedule Base Quantity (Not Due to Force Majeure).

Shortfall Quantity. If, for any Delivery Hour during the Delivery Period, Issuer breaches its obligation to Schedule or deliver all or any portion of the Base Quantity, after giving effect to reductions for Assigned Energy at any Delivery Point pursuant to the terms of this Agreement, then the portion of the Base Quantity that Issuer failed to Schedule or deliver shall be a "Shortfall Quantity".

Issuer Cover Damage Payments. To the extent Purchaser actually purchases Replacement Product with respect to any Shortfall Quantity, then Issuer shall pay to Purchaser the result determined by the following formula:

$$P = Q \times (RP - CP + AF)$$

Where:

P = The amount payable by Issuer under this 0;

Q = The quantity of Replacement Product purchased;

RP = The Replacement Price;

CP = The Contract Price that would have applied to such Product; and

AF = The Administrative Fee.

Purchaser Obligation to Mitigate. Purchaser shall exercise Commercially Reasonable Efforts to mitigate Issuer's damages paid by Issuer hereunder.

Purchaser's Failure to Schedule or Take Base Quantities (Not Due to Force Majeure). If, for any Delivery Hour during the Delivery Period, Purchaser breaches its obligation to Schedule or take all or any portion of the Base Quantity at any Delivery Point pursuant to the terms of this Agreement, then Purchaser shall remain obligated to pay Issuer the Contract Price for such Base Quantity. Issuer shall credit to Purchaser's account any net revenues Issuer may receive from Prepay LLC under the Master Power Supply Agreement in connection with the ultimate sale of any such Product by Prepay LLC to Municipal Utilities or, if necessary, other purchasers, up to the Contract Price.

Assigned Product. 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, except as expressly set forth in 0; provided that Purchaser shall be obligated to pay the amounts specified in 0 regardless of whether the Assigned Product is delivered.

Sole Remedies. Except with respect to (i) termination of this Agreement pursuant to 0 and (ii) the obligations set forth in 0, the remedies set forth in this 0 shall be each Party's sole and exclusive remedies for any failure by the other Party to Schedule, deliver or take Product, as applicable, pursuant to this Agreement.

## **DELIVERY POINTS; SCHEDULING**

### Delivery Points.

Base Delivery Points. All Base Product delivered under this Agreement shall be Scheduled for delivery and receipt at (i) the Delivery Point set forth in Exhibit A-1 (the "Primary Delivery Point") or (ii) any other point (an "Alternate Delivery Point") that has been mutually agreed by Issuer, Purchaser and Prepay LLC (the Primary Delivery Point or, to the extent specified, any Alternate Delivery Point being the "Base Delivery Point"). Delivery of Energy to Purchaser at the Primary Delivery Point shall be facilitated through submission of Inter-SC Trades, as defined in the CAISO Tariff ("ISTs"). Purchaser shall designate a scheduling coordinator in the CAISO market for this purpose as specified in Exhibit G.

Alternate Base Market Prices. The Day-Ahead Market Price and Real-Time Market Price for each Alternate Delivery Point, as applicable, shall be the price mutually agreed and identified by the Parties, or if no such price is identified for such Alternate Delivery Point, the Day-Ahead Market Price and Real-Time Market Price, as applicable, specified on Exhibit A-1 for

the Primary Delivery Point from which quantities are being shifted to such Alternate Delivery Point.

Assigned Energy Delivery Points. Assigned Energy delivered under this Agreement shall be Scheduled for delivery and receipt at the applicable Assigned Delivery Point specified in the applicable Assignment Schedule. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement

Transmission and Scheduling. Issuer shall Schedule or arrange for Scheduling services with CAISO in accordance with the CAISO Tariff, to deliver the Base Product to the Base Delivery Point. Purchaser shall Schedule or arrange for Scheduling services with CAISO in accordance with CAISO Tariff, to receive the Base Product at the Base Delivery Point. If Prepay LLC Schedules or arranges for Scheduling services, to deliver Base Product to the Base Delivery Point, then Issuer's obligations under this Section shall be relieved pro tanto. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Title and Risk of Loss. Title to and risk of loss of the Product delivered under this Agreement shall pass from Issuer to Purchaser at the applicable Delivery Point. The transfer of title and risk of loss for all Assigned Product 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. Subject to Q, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims made by a third party arising from or out of any event, circumstance, act or incident related to the Product delivered hereunder first occurring or existing during the period when control and title to Base Product or Assigned Product is vested in the indemnifying Party as provided in this Section; provided that, notwithstanding the foregoing, (a) Issuer shall have no obligations to indemnify, defend or hold harmless Purchaser for any such Claims relating to replacement costs, cover damages or similar liabilities that are payable to any Person because of Purchaser's failure to deliver any Product to such Person and (b) no obligation to indemnify, defend or hold harmless shall supplant or control the provisions of this Agreement relating to Force Majeure. Notwithstanding anything to the contrary herein, no Party shall have any obligations to indemnify, defend or hold harmless the other Party in respect of any Claims relating to any Assigned Product.

PCC1 Product and Long-Term PCC1 Product. Notwithstanding any other provision of this Agreement to the contrary, to the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

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

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]**.

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]**.

With respect to Sections 5.4(a) through (c), “Seller” means “Issuer”, Buyer means “Purchaser”, and any other capitalized terms not otherwise defined therein shall have the meaning specified in the Assigned PPA.

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]**

Issuer Representations and Warranties.

Issuer represents and warrants:

- (i) Issuer has the right to sell the Assigned Product from the Applicable Project;
- (ii) Issuer has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Purchaser to any other person or entity;
- (iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Issuer for resale to Purchaser hereunder is not being sold by Issuer back to the Applicable Project or PPA Seller;
- (iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;
- (v) The Assigned Product is free and clear of all liens or other encumbrances;
- (vi) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1

Product in compliance with the California Long-Term Contracting Requirements, if applicable

- (vii) The Assigned Product supplied to Purchaser under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and
- (viii) Issuer will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1) or, if applicable, or compliance with the California Long-Term Contracting Requirements.

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

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

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

The electricity transferred by this Agreement is transferred to Purchaser in real time; and

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.

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.

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

Issuer has relied exclusively upon the representations and warranties of each respective APC Party set forth in the Assigned PPAs in making the representations and warranties set forth in this Q and has not performed any independent investigation with respect thereto;

J. Aron has agreed pursuant to the Electricity Sale and Service Agreement to terminate the applicable Assignment Period in the event that any representation or warranty in this Q proves to be incorrect in any respect; and

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

Communications Protocol. With respect to the Scheduling and delivery of Base Quantities, Issuer and Purchaser shall comply with the communications protocol set forth in Exhibit G. Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Agreement pursuant to which the Project Participant shall act as scheduling agent for each of J. Aron, Prepay LLC and Issuer.

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 (including a Balancing Authority operating within the Western EIM) 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 Product into the applicable Balancing Authority shall constitute delivery of such Product to Purchaser hereunder, provided that any associated Renewable Energy Credits and other Assigned Product are also delivered to Purchaser.

Assigned Products. Notwithstanding anything to the contrary herein, except as provided in Q, Issuer shall have no liability under this Q with respect to any Assigned Products.

## **ASSIGNMENT OF POWER PURCHASE AGREEMENTS**

### Assignments Generally.

Initial Assigned Rights and Obligations. Prior to the commencement of the Delivery Period, Purchaser agrees to exercise Commercially Reasonable Efforts to assign the Initial Assigned Rights and Obligations to J. Aron.

Assignments of Replacement Assigned Rights and Obligations. Commencing (i) one year prior to the expiration of any EPS Energy Period or (ii) otherwise immediately upon the early termination or anticipated early termination of a EPS Energy Period or a failure to assign any portion of the Initial Assigned Rights and Obligations, Purchaser shall exercise Commercially Reasonable Efforts and cooperate with J. Aron in good faith to assign a portion of Purchaser's rights and obligations (the "Assigned Rights and Obligations") under one or more power purchase agreements (each such agreement, an "Assignable Power Contract") pursuant to which Purchaser is purchasing EPS Compliant Energy, RECs and other products that may be assigned pursuant to Exhibit F. The Parties recognize that, in the case of such an assignment, J. Aron will be obligated to sell and deliver Assigned Product it receives under all Assigned Rights and Obligations to Prepay LLC under the terms of the Electricity Sale and Service Agreement, and Prepay LLC will be obligated to deliver such Product to Issuer under the terms of the Master Power Supply Agreement. To be effective hereunder, any assignment of Replacement Assigned Rights and

Obligations must be proposed, agreed and consented to in accordance with Exhibit F and the Master Power Supply Agreement.

J. Aron Procurement of EPS Compliant Energy. Under certain circumstances specified in Section 6.1(c) of the Electricity Sale and Service Agreement, J. Aron is obligated to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Purchaser hereunder, and, in such case, Purchaser shall cooperate in good faith with J. Aron in connection therewith, provided that:

J. Aron's procurement of any such EPS Compliant Energy for ultimate redelivery hereunder shall be subject to Purchaser's prior written consent, with such consent not to be unreasonably withheld, provided, for the avoidance of doubt, that it shall be reasonable for Purchaser to withhold its consent based on the requirements of the EPS or other regulatory requirements;

Issuer and Purchaser shall act in good faith and in a Commercially Reasonable manner to negotiate appropriate amendments to this Agreement to facilitate the delivery of such EPS Compliant Energy, including with respect to the Delivery Point, consequences of failing to deliver or receive and scheduling matters;

the period of delivery for any such EPS Compliant Energy (any such period, a "J. Aron 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 such succeeding Reset Period; and

during a J. Aron EPS Energy Period, if requested by J. Aron, Purchaser shall continue to exercise Commercially Reasonable Efforts and cooperate with J. Aron in good faith to assign Assigned Rights and Obligations to J. Aron under an Assignable Power Contract.

Amendments. Purchaser and Issuer agree to seek the written consent of J. Aron prior to any amendment to this 0 or Exhibit F hereto.

Failure to Obtain EPS Compliant Energy. To the extent an EPS Energy Period terminates or expires and Purchaser and J. Aron have been unable to obtain EPS Compliant Energy for delivery hereunder pursuant to the provisions of 0, then, until EPS Compliant Energy is obtained for delivery hereunder, Prepay LLC shall remarket Purchaser's Base Quantities pursuant to the provisions of Exhibit C to the Master Power Supply Agreement, subject to the following:

Purchaser's and J. Aron's obligations set forth in 0 shall continue to apply; and

Purchaser shall not make any new commitment to purchase Priority Products during such a remarketing.

Adjustments to Base Quantities and CPA Fixed Payment Schedule.

The Base Quantity Reductions set forth on Exhibit A-1 hereto have been calculated to reflect the Initial Assigned Rights and Obligations using the same methodology that would apply to determine such Base Quantity Reductions in connection with the assignment of any Replacement Assigned

Rights and Obligations as provided in Exhibit F hereto. Effective upon the first day of the Month following the termination or expiration of an EPS Energy Period for any reason, Issuer shall revise Exhibit A-1 to (i) update the Base Quantity Reductions as provided in Exhibit F to the extent a subsequent EPS Energy Period will commence immediately following such termination or expiration or (ii) reverse such Base Quantity Reductions associated with the EPS Energy Period that terminated or expired for all remaining Hours in the Delivery Period to the extent a replacement EPS Energy Period will not commence immediately following such termination or expiration. In the case of any other commencement of a subsequent EPS Energy Period, Issuer shall revise the Base Quantity Reductions in Exhibit A-1 as provided by Exhibit F hereto.

The CPA Fixed Payments set forth on Exhibit A-3 hereto have been calculated based upon the applicable APC Contract Prices and Assigned Prepay Quantities for the Initial Assigned Rights and Obligations. Effective upon the first day of the Month following termination or expiration of an EPS Energy Period for any reason, Issuer shall revise Exhibit A-3 to reflect (i) the applicable APC Contract Prices and Assigned Prepay Quantities for any EPS Energy Period that will take effect immediately following such termination or expiration or (ii) a reduction in the CPA Fixed Payments to the extent an EPS Energy Period will not commence immediately following such termination or expiration. In the case of any other commencement of an EPS Energy Period, Issuer shall revise Exhibit A-3 to reflect the applicable contract price and notional quantities for such EPS Energy Period.

Tracking of Assigned Energy Value. Purchaser and Issuer acknowledge that the Assigned Delivered Value for any Month may differ from the Assigned Prepay Value for such Month. Any such difference will be reconciled in accordance with this 0.

Assigned Delivery Shortfalls. If the J. Aron Prepay Payment for any Assigned PPA in any Month is less than the J. Aron Fixed Payment for such Assigned PPA, then the excess of the J. Aron Fixed Payment over the J. Aron Prepay Payment (such excess, an “Assigned Delivered Value Shortfall”) shall be added as a positive number to the balance of a notional tracking account maintained by J. Aron under the Electricity Sale and Service Agreement (the “Assigned Value Shortfall Tracking Account”), effective as of the end of the Month in which the applicable J. Aron Prepay Payment is due. An Assigned Delivered Value Shortfall added to the Assigned Value Shortfall Tracking Account will be reduced in future Months by the delivery free of charge of any Assigned Product that is in excess of Assigned Prepay Quantities or, if necessary, by the sale and delivery of additional Base Quantities, as follows:

if a J. Aron PAYGO Payment is included on any Monthly Statement (as defined in the CPA Custodial Agreement), then the balance of the Assigned Value Shortfall Tracking Account shall be reduced by an amount equal to such J. Aron PAYGO Payment (provided that, to the extent such J. Aron PAYGO Payment is not actually paid in accordance with the CPA Custodial Agreement, the Assigned Value Shortfall Tracking Account balance shall not be reduced);

if the Assigned Value Shortfall Tracking Account has a positive balance for more than 90 days at any time, then Purchaser may upon no less than 30 days’ notice direct Issuer to cause J. Aron to deliver Base Quantities under the Electricity Sale and Service Agreement, which Base Quantities will ultimately be redelivered hereunder in

order to reduce the Assigned Value Shortfall Tracking Account balance (such Base Quantities, “Increased Base Quantities”); and

to the extent that the Assigned Value Shortfall Tracking Account in any Month has a balance that exceeds the sum of the remaining CPA Fixed Payments, then in the following Month J. Aron shall deliver Increased Base Quantities in an amount sufficient that, if such amount were delivered in each Month for remainder of the Delivery Period and there were no further additions to the Assigned Value Shortfall Tracking Account, the balance of the Assigned Value Shortfall Tracking Account would equal zero as of the end of the Delivery Period.

Scheduling of Increased Base Quantities. During the Delivery Period, any Increased Base Quantities described under clause (a)(ii) above may be Scheduled on an Hourly basis or as otherwise agreed by Issuer and Purchaser. Issuer shall, if requested by Purchaser, request that Prepay LLC cause J. Aron to exercise Commercially Reasonable Efforts to deliver such Increased Base Quantities ratably during the relevant Months; provided that Purchaser acknowledges and agrees that J. Aron may in its reasonable discretion (i) determine the period of time over which it will deliver such Increased Base Quantities (subject to the requirements of 0) and (ii) adjust such Increased Base Quantities throughout such Months based on changing Day-Ahead Market Prices in order to avoid delivering Increased Base Quantities with a value in excess of the Assigned Value Shortfall Tracking Account balance; provided further that, to the extent that Increased Base Quantities are delivered with a value in excess of the Assigned Value Shortfall Tracking Account balance, Purchaser agrees it shall pay Issuer the Day-Ahead Market Price for such Increased Base Quantities.

No Interest. Notwithstanding anything to the contrary herein, no interest shall accrue on the Assigned Value Shortfall Tracking Account or on any amounts tracked pursuant to such account, including but not limited to any Assigned Delivered Value Shortfall.

J. Aron Non-Payment to APC Party. To the extent that (a) J. Aron fails to pay when due any J. Aron Prepay Payment or J. Aron PAYGO Payment and (b) Purchaser makes a payment for such amounts to the applicable APC Party, Purchaser shall provide notice thereof to Issuer upon Purchaser’s payment to the applicable APC Party and Issuer shall make a payment to Purchaser in the amount of such non-payment; provided that, with respect to any such reimbursement obligations relating to Assigned PAYGO Product, Issuer shall not owe a reimbursement payment to Purchaser for amounts relating thereto unless Issuer has received or has been deemed to receive payment hereunder for such Assigned PAYGO Product consistent with 0.

## USE OF PRODUCT

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 community choice aggregation program 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, if taken or omitted, respectively, would adversely affect the tax-exempt status of the Bonds.

Priority Products. Purchaser agrees to purchase and receive the Base Quantities and Assigned Quantities to be delivered under this Agreement (a) in priority over and in preference to all other Products available to Purchaser that are not Priority Products; and (b) on at least a pari passu and non-discriminatory basis with other Priority Products.

Assistance with Sales to Third Parties. If, notwithstanding Purchaser's compliance with 0, Purchaser does not require all or any portion of the Base Quantities or Assigned Energy to meet its requirements for Energy for any Hour that it is obligated to purchase under this Agreement as a result of (i) insufficient demand by Purchaser's retail customers or (ii) a change in Law, Purchaser may, with reasonable notice issued in the form of a remarketing notice in accordance with Exhibit G, request that Prepay LLC, as permitted by the Master Power Supply Agreement, sell such portion of such Base Quantities or Assigned Energy (i) to another Municipal Utility, or (ii) if necessary, to another purchaser. Any remarketing notice issued under clause (ii) above shall constitute a Structural Remarketing Notice (as defined in the Master Power Supply Agreement) and shall be subject to the requirements set forth in the Master Power Supply Agreement. If Prepay LLC makes such a sale under Exhibit C to the Master Power Supply Agreement, Issuer shall credit against the amount owed by Purchaser to Issuer hereunder the amount received by Issuer from Prepay LLC for such sales less all reasonable costs and expenses directly incurred by Issuer, including but not limited to remarketing administrative charges paid by it to Prepay LLC under the Master Power Supply Agreement, but in no event shall the amount of such credit be more than the Contract Price for the Energy so sold.

Qualifying Use. Without limiting Purchaser's other obligations under this 0, Purchaser agrees that, subject to 0, it will use all of the Product 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 0.

Remediation.

The Parties acknowledge that Purchaser may at times inadvertently remarket Products received hereunder in a manner that does not comply with Qualifying Use Requirements due to daily and hourly fluctuations in Purchaser's Product needs. To the extent Purchaser does so, Purchaser shall (a) exercise Commercially Reasonable Efforts to use any Disqualified Sale Proceeds of such remarketing to purchase Products (other than Priority Products) that Purchaser then uses in compliance with the Qualifying Use Requirements and (b) reserve funds in an amount equal to any Disqualified Sale Proceeds until such Disqualified Sale Proceeds are remediated or transferred to the Trustee pursuant to 0 below.

To the extent that all or a portion of the Contract Quantity is remarketed under 0 and any such remarketing results in a Ledger Entry (as defined in the Master Power Supply Agreement), Purchaser agrees that it shall (i) exercise Commercially Reasonable Efforts to use an amount equivalent to the remarketing proceeds associated with any such Ledger Entry to purchase Non-

Priority Products and use such Non-Priority Products in compliance with the Qualifying Use Requirements in order to remediate such Ledger Entries; and (ii) apply its purchases of Non-Priority Products to remediate any such proceeds under the Master Power Supply Agreement prior to remediating such proceeds under any other contract that provides for the purchase of Priority Products. To track compliance with Purchaser's obligations under this 0, Purchaser shall deliver a remediation certificate to Issuer and Prepay LLC by the tenth day of the Month subsequent to any relevant Non-Priority Products purchases (which may include purchases of Energy from CAISO to the extent such Energy is used in compliance with the Qualifying Use Requirements).

Remediation; Ledger Entries; Redemption.

Remediation. To track compliance with the requirements of 0, Purchaser will provide a quarterly report to Issuer (delivered not later than the 15<sup>th</sup> day of each April, July, October and January until the end of the Delivery Period) showing the following: the total quantity of proceeds from sales of Products received hereunder that (i) were sold by Purchaser to any Person in a transaction that does not comply with the Qualifying Use Requirements and (ii) have not been remediated by Purchaser by applying such proceeds to purchase Products that are used in compliance with the Qualifying Use Requirements (the quantities of Product producing such proceeds, "Disqualified Sale Units" and such proceeds received, "Disqualified Sale Proceeds").

Ledger Entries. Issuer shall report such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units to Prepay LLC for addition to the remarketing ledgers maintained by Prepay LLC under the Master Power Supply Agreement, with the ledger entries to be dated as of the end of the first month of the relevant quarter.

Transfers to Trustee. Purchaser shall transfer (to the extent such unremediated Disqualified Sales Proceeds and associated Disqualified Sale Units remain reflected on the remarketing ledger described under 0 at the time such transfer is required by this 0) any such unremediated Disqualified Sale Proceeds and any other required funds (i.e., all additional funds necessary for redemption of the Bonds referred to in this 0) to the Trustee at least 95 days prior to the second anniversary of the date on which such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units were first reflected on the remarketing ledgers in accordance with 0, with such funds to be deposited in the Debt Service Account (as defined in the Bond Indenture) and applied to the redemption of Bonds as directed by Issuer and approved by Special Tax Counsel (as defined in the Bond Indenture) as preserving the tax-exempt status of the Bonds.

**REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS**

Representations and Warranties of Issuer. 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:

in the case of Issuer as the representing Party, Issuer is a joint powers authority, duly organized and validly existing under the Laws of the State of California,

in the case of Purchaser as the representing Party, Purchaser is a public agency of the State of California, duly organized and validly existing under the Laws of the State of California;

it has all requisite power and authority, corporate or otherwise, to own its material properties, carry on its material business as now being conducted, enter into, deliver and to perform its obligations under this Agreement and to carry out the terms and conditions hereof and the transactions contemplated hereby;

there is no litigation, action, suit, proceeding with service of process accomplished with respect to such Party or investigation pending or, to the best of such Party's knowledge, threatened, in each case before or by any Government Agency and, in each case, which could reasonably be anticipated to materially and adversely affect such Party's ability to perform 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;

the execution, delivery and performance of this Agreement by such Party have been duly authorized by all necessary action on the part of such Party and its governing body and do 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;

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;

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

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, ordinance, rule or regulation 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;

to the best of the knowledge and belief of such Party, no Governmental Approval 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 Governmental Approvals that have been obtained; and

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

Warranty of Title. Issuer warrants that it will deliver to Purchaser (a) all Base Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point, and (b) all Assigned Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person that are imposed on such Assigned Product solely as a result of Issuer's or Prepay LLC's actions.

Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS 0, ISSUER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Continuing Disclosure. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer, including Purchaser's 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 undertakings to enable the underwriters of the offerings of the Bonds to comply with the continuing disclosure provisions of 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.

## TAXES

As between Issuer and Purchaser, Issuer shall (i) be responsible for and pay or cause to be paid all ad valorem, excise, severance, production and other taxes assessed with respect to Product (other than any Assigned Product) delivered pursuant to this Agreement arising prior to the applicable Delivery Point and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. As between Issuer and Purchaser, Purchaser shall (i) be responsible for all taxes with respect to Product received pursuant to this Agreement assessed at or from the applicable Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates. Nothing shall obligate or cause a Party to pay or be liable for any tax for which it is exempt under Law.

## JURISDICTION; WAIVER OF JURY TRIAL

Consent to Jurisdiction. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST EITHER PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT

EXCLUSIVELY IN (A) THE COURTS OF THE STATE OF CALIFORNIA LOCATED IN THE CITY OF LOS ANGELES, (B) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA SITTING IN THE COUNTY OF LOS ANGELES. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH 0; AND AGREES THAT SERVICE AS PROVIDED ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS 0 AND EXECUTED BY EACH OF THE PARTIES), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY A COURT.

### **FORCE MAJEURE**

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 remedy 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.

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.

## **GOVERNMENTAL RULES AND REGULATIONS**

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.

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.

Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter exercise Commercially Reasonable Efforts to 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 subject either Party to any greater or different regulation or jurisdiction that materially affects the rights or obligations of the Parties under this Agreement.

## **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 0, 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; *provided* furthermore that, for the avoidance of doubt, any applicable Assignment Agreement shall

terminate concurrent with the assignment of this Agreement. Prior to assigning this Agreement, Purchaser shall deliver to Issuer written confirmation from each Rating Agency (as defined in the Bond Indenture), *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 such Rating Agency 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 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

## PAYMENTS

### Monthly Statements.

Purchaser's Statements. 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 (i) in respect of any Shortfall Quantity in the prior Month, the Replacement Price applicable to such Shortfall Quantity, and (ii) any other amounts due to Purchaser in connection with this Agreement with respect to the prior Months.

Billing Statements. 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 Product delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Months, (iii) the net amount due to Issuer or Purchaser and (iv) the Assigned Value Shortfall Tracking Account balance, if any; provided that Prepay LLC's delivery of a Billing Statement to Issuer and Purchaser pursuant to and as defined in the Master Power Supply Agreement shall be deemed to satisfy Issuer's obligation to deliver a Billing Statement hereunder; provided furthermore that invoicing for all Assigned PAYGO Product shall occur under the CPA Custodial Agreement. If the actual quantity delivered is not known by the Billing Date, Issuer may provisionally prepare a Billing Statement based on Issuer's best available knowledge of the quantity of Product delivered. The invoiced quantity and amounts paid thereon (with interest calculated on the amount overpaid or underpaid by Purchaser at the Default Rate) will then be adjusted on the following Month's Billing Statement, as actual delivery information becomes available based on the actual quantity delivered.

Supporting Documentation. Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing statements and information described in this Q as such requesting Party may reasonably request.

Payments.

Payments Due. If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to Issuer by wire transfer (pursuant to the Trustee's instructions), in immediately available funds, on or before the later of (i) the 23<sup>rd</sup> day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10<sup>th</sup> day following Purchaser's receipt of Issuer's Billing Statement, or if either 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 later of (i) the 28<sup>th</sup> day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10<sup>th</sup> day following Issuer's receipt of Purchaser's Statement, or if either such day is not a Business Day, the following Business Day. Notwithstanding the foregoing, payments due from Purchaser for Assigned PAYGO Product shall be satisfied by Purchaser's compliance with Q in respect of such Assigned PAYGO Product.

No Duty to Estimate. 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 Q 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).

Payment of Disputed Amounts. If Purchaser disputes any amounts included in a Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Q 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 Q. If Issuer disputes any amounts included in the Purchaser's Statement, Issuer may withhold payment to the extent of the disputed amount; *provided, however*, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

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

Audit; Adjustments.

Right to Audit. 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.

Deadline for Objections. 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 Product delivery.

Payment of Adjustments. All retroactive adjustments shall be paid in full by the Party owing payment within 30 days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in 0, 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 Purchaser's Statement or Billing Statement shall bear interest at the Default Rate from the date such payment was made.

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 0. Notwithstanding the foregoing, no Party shall be entitled to net any amounts that are in dispute and payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Rate Covenant. Purchaser agrees to make payments it is required to make under this Agreement from Utility Revenues, and only from such Utility Revenues, and as a charge against such Utility Revenues, as an operating expense of its electric system and a cost of purchased Product; provided, however, that Purchaser, in its discretion, may apply any legally available moneys to the payment of amounts due under this Agreement. Purchaser hereby covenants and agrees that it will establish, maintain, and set rates and charges for its electric system so as to provide Utility Revenues sufficient, together with all available electric system revenues, to enable Purchaser to pay to Issuer all amounts payable under this Agreement and to pay all other amounts payable from the revenues of Purchaser's electric system, and to maintain any reserves as required by the Purchaser's reserve policy. Purchaser further covenants and agrees that it shall not furnish or supply electric services free of charge to any person, firm, corporation association, or other entity, public or private, except any such service free of charge that Purchaser is supplying on the date hereof or such free service as required by order of the CPUC or the State of California, and that it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of electricity or the provision of transmission, distribution or other services to its customers. Purchaser further covenants and agrees that in any future bond issue, certificate of participation issue, interest rate swap agreement, commodity swap agreement or any other financing or financial transaction undertaken by, or on behalf of, Purchaser in connection with its electric system, Purchaser shall not pledge or encumber the Utility Revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under this Agreement.

**[RESERVED]**

**NOTICES**

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to the other Party (or to any third party) shall be in writing and shall either be sent by email transmission, 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 (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, such as electronic mail. Notwithstanding the foregoing, either Party may at any time notify the other 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.

**DEFAULT; REMEDIES; TERMINATION**

Issuer Default. Each of the following events shall constitute a "Issuer Default" under this Agreement:

any representation or warranty made by Issuer in this Agreement shall prove to have been incorrect in any material respect when made; or

Issuer shall have failed 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 receipt by Issuer of written notice thereof.

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

Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for three Days following receipt by Purchaser of written notice thereof;

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 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 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;

any representation or warranty made by Purchaser in this Agreement proves to have been incorrect in any material respect when made, and such default is not remedied within thirty (30) days after receipt by Purchaser of written notice thereof;

Purchaser shall have failed to perform, observe or comply with any material covenant, agreement or term contained in this Agreement, and such failure continues for more than 30 days following the earlier of receipt by Purchaser of notice thereof; or

Purchaser shall have failed to establish, maintain, or collect rates or charges adequate to provide Utility Revenues sufficient to enable Purchaser to pay all amounts due to Issuer under this Agreement in accordance with 0 (Rate Covenant), and such failure continues for more than 30 days following the earlier of receipt by Purchaser of notice thereof.

#### Remedies Upon Default.

Termination. If at any time a 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 0 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 giving rise to a Purchaser Default specified in 0(iv) or, to the extent analogous thereto, 0(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.

Additional Remedies. In addition to the remedies set forth in 0 (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 Product otherwise to be delivered to Purchaser by it under this Agreement. If Issuer exercises its right to suspend performance under this 0, 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 Product 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) unless otherwise agreed by Issuer, 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 Product 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 Product tendered for delivery under this Agreement, Issuer shall have the right to sell such Product to third parties on any terms that Issuer, in its sole discretion, determines are appropriate.

Effect of Early Termination. As of the effectiveness of any termination date in accordance with clause (i) of 0, (i) the Delivery Period shall end, (ii) the obligation of Issuer to make any further sales and deliveries of Product to Purchaser under this Agreement shall terminate, and (iii) the obligation of Purchaser to purchase and receive deliveries of Product 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 0. 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.

Termination of Master Power Supply Agreement. Purchaser acknowledges and agrees that (i) in the event the Master Power Supply Agreement terminates prior to the end of the primary term of this Agreement, this Agreement shall terminate on the effective date of early termination of the Master Power Supply Agreement (which date shall be the last date upon which deliveries are required thereunder, subject to all winding up arrangements) and (ii) Issuer's obligation to deliver Product under this Agreement shall terminate upon the termination of deliveries of Product to Issuer under the Master Power Supply Agreement. Issuer shall provide notice to Purchaser of any early termination date of the Master Power Supply Agreement. The Parties recognize and agree that, in the event that the Master Power Supply 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 Product under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, no Monthly Discount Percentage or Annual Refunds shall be associated with such deliveries and the Contract Price shall be adjusted accordingly.

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 PRODUCT 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.

## MISCELLANEOUS

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.

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;

on the Bond Closing Date, Purchaser shall deliver to Issuer a fully executed Federal Tax Certificate in substantially the form attached hereto as Exhibit D; and

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

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.

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.

NonWaiver. 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 or breaches shall be deemed a waiver of any other subsequent breach.

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.

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

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 Q, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Relationship 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.

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 with respect to its obligations or any Claims under this Agreement.

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 Master Power Supply 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 Master Power Supply Agreement.

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 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.

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.

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 Issuer's rights and Purchaser's obligations under this Agreement, (c) J. Aron shall be a third-party beneficiary of this Agreement with the right to enforce the provisions of 0 and Exhibit F of this Agreement, (d) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (e) in the event of any Purchaser Default under 0, (i) Prepay LLC may, to the extent provided for in, and in accordance with, the Receivables Purchase Exhibit to the Master Power Supply Agreement, take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and Prepay LLC or any third party transferee who purchases and takes assignment of such receivables from Prepay LLC shall thereafter have all rights of collection with respect to such receivables (provided that, if at any time an insurance provider agrees to insure Purchaser's payment obligations hereunder, then such insurance provider shall have the same rights under this 0 as Prepay LLC), and (ii) if such receivables are not so assigned, the Swap Counterparty or Swap Counterparties (as defined in the Bond Indenture) shall have the right to pursue collection of such receivables to the extent any non-payment by Issuer to any Swap Counterparty was caused by Purchaser's payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and, as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

No Recourse to Members of Purchaser. Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Purchaser shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Issuer shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the employees, directors, officers, consultants or advisors or Purchaser or its constituent members, in connection with this Agreement.

Waiver of Defenses. Each Party waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to it with regard to its obligations pursuant to the terms of this Agreement.

Rate Changes.

Standard of Review. Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in 0 below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power

Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

Waiver. In addition, and notwithstanding 0, to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. In the event it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this 0 shall not apply, *provided* that, consistent with 0, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in 0.

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

***[Separate Signature Page(s) Attached]***

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CLEAN POWER ALLIANCE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A-1**  
**BASE QUANTITIES; BASE DELIVERY POINTS; COMMODITY REFERENCE PRICES**

[To be attached.]

**EXHIBIT A-2**  
**INITIAL ASSIGNED RIGHTS AND OBLIGATIONS**

[To be attached.]

**EXHIBIT A-3**  
**CPA FIXED PAYMENT SCHEDULE**

[To be attached.]

**EXHIBIT B**

**NOTICES**

**IF TO ISSUER:** California Community Choice Financing Authority  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Email: [\_\_\_\_\_]

**IF TO PURCHASER:** Clean Power Alliance  
801 South Grand Avenue, Suite 400  
Los Angeles, CA 90017  
Email: [\_\_\_\_\_]

**EXHIBIT C**

**REMARKETING ELECTION NOTICE**

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

Aron Energy Prepay [ ] LLC  
c/o J. Aron & Company LLC  
200 West Street  
New York, NY 10282

[Trustee]  
[ ]  
[ ]  
Attention: [ ]  
Email: [ ]

To the Addressees:

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

Pursuant to Section 3.5(b) of the Clean Energy Purchase Contract, the Purchaser has elected to have its Base Quantity, for each Hour of the Reset Period commencing \_\_\_\_\_ and extending to and including \_\_\_\_\_, remarketed beginning as of the commencement of such Reset Period. The resumption of deliveries of Base Quantities in any future Reset Period shall be in accordance with Section 3.5(d) of the Clean Energy Purchase Contract.

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

CLEAN POWER ALLIANCE

By: \_\_\_\_\_  
Printed Name:  
Title:

**EXHIBIT D**

**FORM OF FEDERAL TAX CERTIFICATE**

This Federal Tax Certificate is executed in connection with the Clean Energy Purchase Contract dated as of [\_\_\_\_], 2022 (the “Clean Energy Purchase Contract”), by and between the California Community Choice Financing Authority (“Issuer”) and Clean Power Alliance, a California joint powers authority (“Power Purchaser”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Clean Energy Purchase Contract, in the Tax Certificate and Agreement, or in the Bond Indenture.

WHEREAS Power Purchaser acknowledges that Issuer is issuing the Bonds to fund the prepayment price under the Master Power Supply 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 Power Purchaser’s use of Energy acquired pursuant to the Clean Energy Purchase Contract and certain funds and accounts of Power Purchaser will affect the Bonds’ qualification for such tax exemption.

NOW, THEREFORE, POWER PURCHASER HEREBY CERTIFIES AS FOLLOWS:

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

Power Purchaser will resell all of the Energy acquired pursuant to the Clean Energy Purchase 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.

From [\_\_\_\_, ] to [\_\_\_\_, \_\_], the annual average amount of Energy purchased (other than for resale) by customers of Power Purchaser who are located within the service area of Power Purchaser is [\_\_\_\_\_] MWh. Over the term of the Clean Energy Purchase Contract, the Power Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Power Purchaser who are located within the service area of the Power Purchaser to be at least [\_\_\_\_\_] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Clean Energy Purchase Contract is [\_\_\_\_\_] MWh. The annual average amount

of Energy which Power Purchaser otherwise has a right to acquire as of the Closing Date (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) is [ ] MWh. The sum of (a) the maximum amount of Energy in any year being acquired pursuant to the Clean Energy Purchase Contract, and (b) the amount of Energy that Power 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 Clean Energy Purchase Contract by Power Purchaser, supplemented by the amount of Energy otherwise available to Power Purchaser as of the Closing Date, during any year does not exceed the sum of [ ]% of the expected annual average amount of Energy to be purchased (other than for resale) by customers of Power Purchaser who are located within the service area of Power Purchaser;

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

Power Purchaser expects to pay for Energy acquired pursuant to the Clean Energy Purchase Contract solely from funds derived from its power distribution operations. Power Purchaser expects to use current net revenues of its to pay for current Energy acquisitions. Neither the Power Purchaser nor any person who is a related party to the Purchaser will hold any funds or accounts in which monies are invested and which are reasonably expected to be used to pay for Energy acquired 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 Power Purchaser or any persons who are related Persons to Power Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

\_\_\_\_\_, 2022

By: \_\_\_\_\_

[Name]

[Title]

**EXHIBIT E**

**OPINION OF COUNSEL**

California Community Choice Financing Authority  
San Rafael, CA

Aron Energy Prepay [ ] LLC  
New York, NY

Goldman Sachs & Co. LLC  
New York, NY

[Trustee]  
[ ]

[Swap Counterparty 1]  
[ ]

[Swap Counterparty 2]  
[ ]

Re: Power Supply Contract between Clean Power Alliance and  
California Community Choice Financing Authority dated as  
of [ ], 2022

Ladies and Gentlemen:

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

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

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

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

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

A copy of the Supply Contract executed by Purchaser; and

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

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

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

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

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

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

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

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

imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

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

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

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

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

Very truly yours,



## EXHIBIT F

### ASSIGNMENT OF ASSIGNABLE POWER CONTRACTS

**General Requirements.** Assigned Rights and Obligations under an Assignable Power Contract may only be assigned under this Exhibit F if the following requirements are satisfied or waived by J. Aron and Issuer:

The seller under such Assignable Power Contract (the “APC Party”) either (i) has a long-term senior unsecured credit rating that is “Baa3” or higher from Moody’s Investor’s Service, Inc. (or any successor to its credit rating service operation), “BBB-” or higher from Standard & Poor’s Global Ratings (or any successor to its credit rating service operation) or “BBB-” or higher from Fitch Ratings, Inc. (or any successor to its credit rating service operation), (ii) provides credit support that is reasonably satisfactory to J. Aron or (iii) otherwise provides evidence of its creditworthiness that is reasonably satisfactory to J. Aron (which, for the avoidance of doubt, may include credit support provided by such APC Party to Purchaser).

The APC Party satisfies J. Aron’s internal requirements as they relate to “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.

The APC Party is organized in the United States and in a jurisdiction that does not present adverse tax consequences to J. Aron or Issuer in connection with such proposed assignment.

J. Aron, Purchaser, and Issuer have agreed on and executed an Assignment Schedule for such assignment.

J. Aron, Purchaser, Issuer, and the applicable APC Party have agreed on and executed an Assignment Agreement for such assignment.

The contract price (in \$/MWh) payable by Purchaser under the applicable Assignable Power Contract (the “APC Contract Price”) is a fixed price unless Issuer, Purchaser and J. Aron agree, each in their sole discretion, to appropriate changes to the relevant documents to accommodate a floating APC Contract Price. For purposes of this Exhibit H, a “fixed price” shall be deemed to include any price that is fixed but for a periodic escalation, whether pre-determined or by reference to a price index, provided that the Base Quantity Reductions required to reflect any index-based escalation shall be made promptly following the time that such index is available.

If the Assignable Power Contract is unit-contingent or for an as-generated Product, then:

J. Aron has determined with a high degree of certainty that the Applicable Project will be able to generate the Assigned Prepay Value in each Month during the proposed Assignment Period.

The Applicable Project (as defined below) has generated the Assigned Prepay Value (as defined below) in each Month since commencing commercial operation.

**Proposed Assignment.** Purchaser may propose an assignment of Assigned Rights and Obligations under 0 of the Clean Energy Purchase Contract by delivering the following items to Issuer and to J. Aron:

A written notice of the proposed assignment signed by Purchaser.

A true and complete copy of the Assignable Power Contract under which such Assigned Rights and Obligations would arise.

Evidence reasonably satisfactory to Issuer and J. Aron that all authorizations, consents, approvals, licenses, rulings, permits, exemptions, variances, orders, judgments, decrees, declarations of or regulations by any Government Agency necessary in connection with the transactions contemplated by the Assignable Power Contract and the assignment of the Assignable Power Contract to J. Aron have been obtained and are in full force and effect. Such evidence may be provided by a closing certificate with appropriate back-up materials.

Such additional information as Issuer and J. Aron may reasonably request regarding the Assignable Power Contract and the APC Party.

If the Assignable Power Contract is unit-contingent or for an as-generated Product, then:

A description and information of the applicable project to which the Assignable Power Contract applies (the "Applicable Project"), including but not limited to information on the location, interconnection(s), and operating and compliance history of Applicable Project.

Either (i) a report from a nationally recognized consultant in the energy industry that is reasonably acceptable to Issuer and J. Aron showing the "P99" forecasted generation ("P99 Generation") and "P50" forecasted generation ("P50 Generation") of the Applicable Project for the entire Assignment Period, as the terms P99 and P50 are commonly used in the renewable energy industry or (ii) monthly historical generation and meteorological data of the Applicable Project dating back to the commercial operation date.

Following Issuer's and J. Aron's receipt of such information, Purchaser and Issuer will and J. Aron has agreed in the Electricity Sale and Service Agreement to (i) negotiate in good faith with one another and exercise Commercially Reasonable Efforts to agree upon an Assignment Schedule, with the initial draft of such Assignment Schedule to be developed by J. Aron, and (ii) negotiate in good faith with one another and the APC Party regarding an Assignment Agreement, in each case related to the proposed assignment. If such Assignment Schedule and Assignment Agreement are agreed to by the representative parties thereto, the applicable parties will execute such Assignment Agreement and Assignment Schedule to be effective upon the assignment of the Assigned Rights and Obligations from Purchaser to J. Aron pursuant to the Assignment Agreement. J. Aron will act in good faith in considering proposed assignments that meet the criteria set forth in this Exhibit F, in accordance with the provisions set forth in the Electricity Sale and Service Agreement. For the avoidance of doubt, Purchaser acknowledges that J. Aron will not be required to execute any Assignment Agreement or Assignment Schedule, or otherwise accept any Assigned Rights and Obligations unless the APC Party (i) satisfies J. Aron's internal requirements as they relate to "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, (ii) is organized in the United States, and (iii) satisfies all other requirements in Section 1 of this Exhibit F.

**Assignment Schedule.** In connection with each assignment, an “Assignment Schedule” will be prepared in the form attached hereto as Annex I (with such changes as agreed by the Parties in their sole discretion), must be executed by Purchaser, Issuer and J. Aron, and must include each of the following:

The term of such Assigned Rights and Obligations (an “Assignment Period”) shall have the meaning specified in each applicable Assignment Agreement and shall (i) end not later than (a) the end of the delivery period under the Assignable Power Contract and (b) the end of the Delivery Period under this Agreement, (ii) not commence any earlier than sixty (60) days after Purchaser’s original notice under Section 2.1 above, and (iii) have a primary term that is not less than 18 Months in duration (provided, for the avoidance of doubt, the primary term references the term of the applicable Assignment Period and not the term of the Assignable Power Contract).

If the Assignable Power Contract is unit-contingent or for an as-generated product, then a description of the Applicable Project.

The “Assigned Prepay Quantity” means, for each Month of an Assignment Period and each Assignment Agreement, a quantity of Energy agreed upon by J. Aron, Issuer and Purchaser, which Assigned Prepay Quantity, if the Assignable Power Contract is unit contingent or for an as-generated Product, shall not exceed an amount that J. Aron has determined with a high degree of certainty that the Applicable Project will be able to generate in each Month during the Assignment Period; provided that the Assigned Prepay Quantity for each Month may not exceed the limit expressed in the proviso to Section 3.4 below. For the avoidance of doubt, the Assigned Rights and Obligations will include all of Purchaser’s rights to receive Energy under the Assignable Power Contract even if such rights to receive Energy may exceed the Assigned Prepay Quantity.

An updated Exhibit A-1 to the Clean Energy Purchase Contract reflecting a reduction in Base Quantity for each Hour during an Assignment Period after giving effect to the Assignment Schedule (each, a “Base Quantity Reduction”), which Base Quantity Reduction for each Hour will equal (i) the Assigned Prepay Quantity for such Hour, multiplied by (ii) the result of (A) the APC Contract Price applicable for such Hour, divided by (B) the Fixed Price; provided that if the Base Quantity Reduction for any Hour would result in a Base Quantity of less than zero, then the Assigned Prepay Quantity for such Hour will be reduced to the closest whole MWh such that the Base Quantity is not reduced below zero.

The APC Contract Price, which as set forth in Section 1.6 above must be a fixed price unless Issuer, Purchaser and J. Aron agree to appropriate changes to the relevant documents to accommodate a floating APC Contract Price.

The Assigned Delivery Point for all Assigned Energy.

The Assigned Product included in the Assigned Rights and Obligations, which Assigned Product may not include any Product other than (a) Energy, (b) associated RECs, and (c) other product included within the sale of Energy and not separately delivered from Energy, provided

that the APC Contract Price must be inclusive of any amounts due in respect of all Assigned Product.

**ASSIGNMENT SCHEDULE**

**Assigned Product:** [\_\_\_\_\_]

**Assigned Delivery Point:** [\_\_\_\_\_]

**Assigned Prepay Quantity:** As set forth in Appendix 2; provided that all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1.

**APC Contract Price:** \$[\_\_\_\_\_] /MWh

**Assignment Period:** [\_\_\_\_\_]

**Other Provisions:**

**Attachment:** Updated Exhibit A-1 to Clean Energy Purchase Contract

### **FORM OF LIMITED ASSIGNMENT AGREEMENT**

**NOTE:** Purchaser may include the form included in this Annex II as an exhibit to any PPA executed by Purchaser and include the following or similar language in the PPA: “[Seller] agrees that [Buyer] may assign a portion of its rights and obligations under this Agreement to J. Aron & Company LLC (“J. Aron”) at any time upon not less than [\_\_\_\_] days’ notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in the form attached hereto as [Exhibit \_\_\_\_], with the blanks in such form completed in [Buyer’s] sole discretion. Provided that [Buyer] delivers a proposed assignment agreement complying with the previous sentence, [Seller] agrees to (i) comply with J. Aron’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to [Seller], including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of J. Aron and Company, LLC and [Buyer].”

**[To be attached in the form agreed by J. Aron and CPA.]**

## EXHIBIT G

### COMMUNICATIONS PROTOCOL FOR BASE QUANTITIES

This Exhibit G (“Communications Protocol”) addresses the Scheduling of Base Quantities to be delivered and received at the Base Delivery Point. It is intended to be attached to both the Master Power Supply Agreement and the Clean Energy Purchase Contract, each as defined below.

#### ADDITIONAL DEFINED TERMS

In addition to the terms defined in 0 of this Agreement, the following terms used in this Communications Protocol shall have the following meanings:

“Agreement” means (i) when this Communications Protocol is attached to the Master Power Supply Agreement, the Master Power Supply Agreement and (ii) when this Communications Protocol is attached to the Clean Energy Purchase Contract, the Clean Energy Purchase Contract.

“Clean Energy Purchase Contract” means that certain Clean Energy Purchase Contract dated as of [\_\_\_\_], 2022 by and between Issuer and Project Participant.

“Delivery Scheduling Entity” means Prepay LLC or a Person designated by Prepay LLC, as set forth in Attachment 4 hereto or in a subsequent written notice to Issuer and the Project Participant.

“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).

“Master Power Supply Agreement” means that certain Master Power Supply Agreement dated as of [\_\_\_\_], 2022 by and between Prepay LLC and Issuer that is specified as relating to the Clean Energy Purchase Contract with Project Participant.

“Operational Nomination” has the meaning specified in Section 4.1.1.

“Prepay LLC” means Aron Energy Prepay [\_\_] LLC, a Delaware limited liability company.

“Project Participant” means Clean Power Alliance, a California joint powers authority.

“Receipt Scheduling Entity” for any Delivery Point means the Project Participant, unless the Clean Energy Purchase Contract has been suspended or terminated, in which case the Receipt Scheduling Entity will be Issuer or a Person designated by Issuer for such Delivery Point in accordance with this Communications Protocol.

“Relevant Contract” means the Master Power Supply Agreement and the Clean Energy Purchase Contract.

“Relevant Party” means Issuer, Prepay LLC or the Project Participant.

“Relevant Third Party” means any Person that is (i) a Transmission Provider that will or is intended to transport Product to be delivered or received under the Agreement, (ii) an independent system operator or control area that coordinates the Scheduling of Product at the Base Delivery Point, (iii) Scheduling receipt of Product by Issuer or for the account of Issuer to the extent such Product has been delivered to Issuer or for the account of Issuer under the Master Power Supply Agreement, and (iv) delivering Product to Issuer or for the account of Issuer to the extent such Product is intended to be re-delivered ultimately to the Project Participant or for the account of the Project Participant under the Clean Energy Purchase Contract.

“Scheduling Entities” means the Receipt Scheduling Entity and the Delivery Scheduling Entity.

## AGREEMENTS OF RELEVANT PARTIES

Each Relevant Party that is a party to Relevant Contract to which this Communications Protocol is attached acknowledges that this Communications Protocol sets forth certain obligations that may be delegated to other Relevant Parties that are not parties to such Relevant Contracts. In connection therewith:

***Reliance on Scheduling Entity.*** Each Relevant Party shall be entitled to rely exclusively on any communications or directions given by a Delivery Scheduling Entity or Receipt Scheduling Entity, in each case to the extent such communications are permitted hereunder.

***Performance of Communications Protocol.*** Each Relevant Party to a Relevant Contract shall cause its counterparty to each other Relevant Contract to comply with the provisions of this Communications Protocol as the provisions apply to such counterparty to the extent required to perform the obligations of the Relevant Party under the Relevant Contract.

***Third Party Beneficiaries.*** To the extent this Communications Protocol purports to give any Relevant Party (a “Beneficiary”) rights vis-à-vis any other Relevant Party (a “Burdened Party”) with whom such Beneficiary does not have privity under a Relevant Contract, such Beneficiary shall be deemed to be a third party beneficiary of each Relevant Contract to which the Burdened Party is a party to the extent necessary or convenient to enforce the obligations of the Burdened Party under this Communications Protocol.

***Amendment of Relevant Contracts.*** No Relevant Party shall amend, waive or otherwise modify any provision of any Relevant Contract to which it is a party without the consent of each other Relevant Party whose rights or obligations would

be materially and adversely affected by such amendment, waiver or modification as it relates to this Communications Protocol.

***Amendment of Communications Protocol.*** No Relevant Party shall amend any provision of this Communications Protocol in a Relevant Contract without the consent of each other Relevant Party.

***Waiver of Communications Protocol.*** No Relevant Party shall waive any provision of this Communications Protocol in a Relevant Contract without the consent of each other Relevant Party whose rights or obligations would be materially and adversely affected by such waiver.

## **DESIGNATION AND REPLACEMENT OF SCHEDULING ENTITIES**

***Designation of Delivery Scheduling Entity.*** Prepay LLC may designate a new Delivery Scheduling Entity upon thirty (30) days written notice to Issuer substantially in the form of Attachment 4. Any Scheduling Entity designated in accordance with this Section 3.1 shall commence service at the beginning of a Month, unless mutually agreed in writing between Prepay LLC and Issuer.

***Assumption by Receipt Scheduling Entity.*** If any Delivery Scheduling Entity (other than Prepay LLC) persistently fails to perform its obligations as contemplated under this Communications Protocol, the Receipt Scheduling Entity may, by notice to Prepay LLC, require that Prepay LLC deal directly with the Receipt Scheduling Entity until a new Delivery Scheduling Entity is designated in accordance with this Section 3.1.

***Scheduling Coordinator.*** Project Participant shall designate a scheduling coordinator for the purposes of accepting Base Product delivery at the Base Delivery Point through the scheduling of ISTs.

## **INFORMATION EXCHANGE AND COMMUNICATION BETWEEN ISSUER AND PREPAY LLC**

### ***Communication of Operational Nomination Details.***

Not later than three Days prior to each Day during which Base Product is required to be delivered under the Agreement, the Receipt Scheduling Entity for such Delivery Point may deliver an operational nomination in writing (the “Operational Nomination”) indicating any inability of a Project Participant to receive all of its Base Quantities during such Day, which Operational Nomination shall be without prejudice to any party’s rights under the Relevant Contracts for failure to receive Base Quantities. If no changes to Base Quantities are so submitted, the Operational Nomination shall be deemed to nominate the full Base Quantities required to be delivered on a Day.

Not later than three Days prior to each Day during which Base Product is required to be delivered under the Agreement, the Delivery Scheduling Entity for such Delivery Point may revise the Operational Nomination to indicate any inability of Prepay LLC to deliver all Base Quantities during such Day, which revised Operational Nomination shall be without prejudice to any party's rights under the Relevant Contracts for failure to deliver Base Quantities.

***Event-specific Communications.***

Remarketing Notices issued by Issuer under the Master Power Supply Agreement shall be substantially in the form of Attachment 2 hereto. Any such notices to remarket must be delivered directly to Prepay LLC and the Delivery Scheduling Entity.

Each Scheduling Entity shall notify Prepay LLC, Issuer and the Project Participant as soon as practicable in the event of: (i) any deficiencies in Scheduling related to such Scheduling Entity; (ii) any deficiencies in Scheduling related to the other such Scheduling Entity; and (iii) any issues with Relevant Third Parties that that would reasonably be expected to create issues related to Product Scheduling under the Relevant Contract.

**ACCESS AND INFORMATION**

***Verification of Product Scheduled.*** In addition to the delivery of and access to the records and data required pursuant to the Agreement, each Relevant Party agrees to provide relevant records from itself and other Relevant Third Parties necessary to document and verify Product Scheduled within and after the Month as needed to facilitate the Relevant Contracts.

***View Rights.*** To the extent requested by a Delivery Scheduling Entity or Prepay LLC, the Receipt Scheduling Entities will use Commercially Reasonable Efforts to cooperate with the Delivery Scheduling Entity and Prepay LLC to ensure that Delivery Scheduling Entity and Prepay LLC has sufficient agency view rights from each such Scheduling Entity to allow Prepay LLC to view Base Product Scheduling at the Base Delivery Point.

**NOTICES**

Any notice, demand, request or other communication required or authorized by this Communications Protocol to be given by one Relevant Party to another Relevant Party shall be in writing, except as otherwise expressly provided herein. It shall either be sent by facsimile (with receipt confirmed by telephone and electronic transmittal receipt), courier, or personally delivered (including overnight delivery service) to the representative of the other Relevant Party designated in Attachment 1 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone and electronic transmittal receipt or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Relevant Party shall have the right, upon written notice to the other Relevant 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.

**NO IMPACT ON CONTRACTUAL OBLIGATIONS**

Except as expressly set forth herein or in an applicable Relevant Contract, nothing in this Communications Protocol nor any Relevant Party's actions or inactions hereunder shall have any impact on any Relevant Party's rights or obligations under the Relevant Contracts.

**ATTACHMENTS**

Attachment 1 - Key Personnel

Attachment 2 - Remarketing Notice Form

Attachment 3 - Designation of Alternate Base Delivery Points Form

Attachment 4 - Designation of Scheduling Entities Form

## **Attachment 1**

### **Key Personnel**

#### **Prepay LLC Marketing Personnel:**

Kenan Arkan  
Sales and Trading  
Telephone: (212) 357-2542  
gs-prepay-notices@gs.com

#### **Prepay LLC Scheduling Personnel:**

Scheduling Team  
Email: ficc-jaron-natgasops@ny.email.gs.com  
Direct Phone: (212) 902-8148  
Fax: 212.493.9847

Carly Norlander  
ICE Chat: cnorlander1  
Email: ficc-jaron-natgasops@ny.email.gs.com  
Direct Phone: (403) 233-9299  
Fax: (212) 493-9847

#### **Other Prepay LLC Personnel:**

Eric Hudson  
Telephone: (212) 855-0880  
ficc-struct-sett@gs.com

Patricia Hazel  
Telephone: (212) 855-0880  
ficc-struct-sett@gs.com

Andres E. Aguila  
Telephone: (212) 855-6008  
Fax: (212) 291-2124  
andres.aguila@gs.com

**Issuer Personnel:**  
seriesanotices@cccfa.org

**Project Participant Personnel:**  
[Email]

**Attachment 2**

**Remarketing Notice Form**

Date: [ \_\_\_\_\_ ]

To: Prepay LLC Scheduling

From: Project Participant Scheduling

This notice is being delivered pursuant to that certain Master Power Supply Agreement (the “Prepaid Agreement”) dated as of [\_\_\_\_], 2022 by and between Aron Energy Prepay [ ] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and relates to the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance (“Project Participant”). Capitalized terms not defined herein are defined in the Prepaid Agreement.

Check the box to indicate type of Remarketing Notice (*The numbers of the Primary (“P”) and Alternate (“A”) Delivery Points below correspond to those same Primary Delivery Points and Alternate Delivery Points set forth in Exhibit A-1 of the Agreement, or as may be designated by the Parties from time to time*):

Monthly Remarketing Notice:

Month(s) for which remarketing is requested: \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

Pursuant to Section 3(b) of Exhibit C of the Clean Energy Purchase Contract, Project Participant requests that Prepay LLC remarket in such Month(s) the following Base Quantities of Product required to be delivered at the following Delivery Points:

Delivery Point (P/A, #)	MWh/ Hour for each Hour in the Month

Daily Remarketing Notice:

Hours for which remarketing is requested: \_\_\_\_\_, 20\_\_ through  
 \_\_\_\_\_, 20\_\_.

Pursuant to Section 3(c) of Exhibit C of the Clean Energy Purchase Contract, Project Participant requests that Prepay LLC remarket for such Hours the following Base Quantities of Product required to be delivered at the following Delivery Point:

Delivery Point (P/A, #)	MWh/Hour

Submitted by Project Participant:  
 CLEAN POWER ALLIANCE

By: \_\_\_\_\_  
 Name:  
 Title:

**Attachment 3**

**Designation of Alternate Base Delivery Points Form**

This designation is delivered pursuant to that certain Master Power Supply Agreement (the “Master Power Supply Agreement”) dated as of [\_\_\_\_], 2022 by and between Aron Energy Prepay [ ] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance (“Project Participant”). Capitalized terms not defined herein are defined in the Master Power Supply Agreement and the Clean Energy Purchase Contract. [Project Participant and/or Issuer] hereby proposes the following Alternate Delivery Points for deliveries of Energy that would otherwise be made at the specified Primary Delivery Point:

<b>ALTERNATE DELIVERY POINT</b>	<b>PRIMARY DELIVERY POINT AFFECTED</b>	<b>COMMODITY REFERENCE PRICE PRICING POINT</b>	<b>ADDITIONAL RESTRICTIONS</b>
1			[e.g.
2			Vol. Limit:
3			Time Limit:]
(etc.)			

Unless otherwise agreed among Prepay LLC, Issuer and Project Participant, an Alternate Delivery Point shall utilize the same Commodity Reference Price as the Primary Delivery Point it replaces or otherwise affects. Project Participant is not required to agree or accept this designation (or any change to the Commodity Reference Price) if it is being submitted by Issuer pursuant to the Master Power Supply Agreement only.

<b>AGREED AND ACCEPTED BY PREPAY LLC:</b>	<b>(if required) AGREED TO AND ACCEPTED BY PROJECT PARTICIPANT:</b>	<b>(if required) AGREED TO AND ACCEPTED BY ISSUER:</b>
By: Name: Title:	By: Name: Title:	By: Name: Title:

**Attachment 4**

**Designation of Scheduling Entities Form**

This designation is being delivered pursuant to that certain Master Power Supply Agreement (the “Master Power Supply Agreement”) dated as of [\_\_\_\_], 2022 by and between J. Aron Energy Prepay [\_\_] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and relates to the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance (“Project Participant”). Capitalized terms not defined herein are defined in the Master Power Supply Agreement and Clean Energy Purchase Contract.

[If delivered by Project Participant:

**Receipt Scheduling Entity:**

Delivery Point: \_\_\_\_\_

Effective Date(s) of Service of Receipt Scheduling Entity (full Months only):  
\_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_, if applicable

Notice Information for Receipt Scheduling Entity:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_]

[If delivered by Prepay LLC:

**Delivery Scheduling Entity:**

Delivery Point: \_\_\_\_\_

Effective Date(s) of Service of Delivery Scheduling Entity (full Months only):  
\_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_, if applicable

Notice Information for Delivery Scheduling Entity:

Name: \_\_\_\_\_

Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_ ]  
Submitted by:

[Project Participant or Prepay LLC]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT H****PRICING AND OTHER TERMS**

Administrative Fee:	\$[____]/MWh
Delivery Period:	The period beginning on and including [____], 2022 and ending at the end of the Day before [____], 20[____]; provided that the Delivery Period shall end immediately upon termination of deliveries of Product under the Master Power Supply Agreement pursuant to Article XVII thereof or early termination of the Clean Energy Purchase Contract pursuant to <u>Q</u> hereof.
Initial Reset Period:	The period beginning at the beginning of the Day on [____], 2022 and ending at the end of the Day before [____], 20[____].
Minimum Discount Percentage:	An Available Discount Percentage as determined under the Re-Pricing Agreement of [____]%.
Monthly Discount Percentage:	For each Month of the Initial Reset Period, [____]%, and for each Month of any other Reset Period, the percentage determined by the Calculation Agent as defined in and pursuant to the Re-Pricing Agreement, exclusive of any Annual Refund.

**DRAFT**

**FORM OF ASSIGNMENT SCHEDULE  
[PROJECT NAME]**

**Assigned Product:** [ ]

**Assigned Delivery Point:** [ ]

**Assigned Prepay Quantity:** As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1 and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and J. Aron and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

**APC Contract Price:** \$[ ]/MWh

**Assignment Period:** [ ]

**Other Provisions:** [ ]

## FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_], 2022 by and among [\_\_\_\_], [\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

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

### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it shall have the option to make such payment and that it will be an Event of Default pursuant to Section [\_\_\_\_] if PPA Buyer does not make such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller; in which case, PPA Buyer will exercise its reimbursement claim pursuant to Section 6.5 of the Clean Energy Purchase Contract, dated as of [\_\_\_\_], by and between PPA Buyer and California Community Choice Financing Authority (the “Clean Energy Purchase Contract”).
- (c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice (as defined in the PPA) of a Force Majeure

Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to J. Aron of annual forecasts of Metered Energy and monthly forecasts of Available Capacity provided pursuant to Section [ ] of the PPA; (iv) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section [ ], provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section [ ], will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.

- (e) PPA Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer; and (ii) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products (“PPA Buyer Receivables”) may be transferred to J. Aron. J. Aron may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation. Thereafter, PPA Seller shall be entitled to pursue collection on such PPA Buyer Receivables directly against PPA Buyer.
- (f) On or before the commencement of the Assignment Period, The Goldman Sachs Group (“Guarantor”), Inc. will issue, in favor of PPA Seller, a guaranty of J. Aron’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“Guaranty”).
- (g) Notwithstanding any other provision of this Agreement, PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs. Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs. As used in this clause (g), the following terms have the meanings specified below.

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

“**CAISO Tariff**” means CAISO’s Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

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

“**Scheduling Coordinator**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO.

- (h) J. Aron, PPA Seller, PPA Buyer and Aron Energy Prepay 14 LLC are entering into that certain Custodial Agreement of even date herewith (the “**Custodial Agreement**”). As set forth more fully therein, all payments due to PPA Seller in respect of Section [ ] of the PPA will be paid (subject to Section 1(e) above) pursuant to the Custodial

Agreement and all payments due to PPA Buyer in respect of Section [ ] of the PPA will be paid by PPA Seller through the Custodial Agreement.

- (i) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between J. Aron and PPA Buyer and has no impact on PPA Seller's rights and obligations under the PPA.

## 2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
  - (1) delivery of a written notice of termination specifying a termination date by either J. Aron or PPA Buyer to each of the other Parties;
  - (2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by J. Aron with five (5) business days following receipt by J. Aron and PPA Buyer of written notice;
  - (3) delivery of a written notice by PPA Seller if any of the events described in Section [ ] [Bankruptcy] of the PPA occurs with respect to J. Aron; or
  - (4) delivery of a written notice by J. Aron if any of the events described in Section [ ] [Bankruptcy] of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end 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 expiration or early termination of the Assignment Period
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end 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 expiration or early termination of the Assignment Period.
- (d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end 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 expiration or early termination of the Assignment Period.

**3. Representations and Warranties.** The PPA Seller and the PPA Buyer represent and warrant to J. Aron that (a) the PPA is in full force and effect; (b) 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; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

**4. Notices.** Any notice, demand, or request required or authorized by this Assignment 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 J. Aron of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC  
200 West Street  
New York, New York 10282-2198  
Email: gs-prepay-notices@gs.com

**5. Miscellaneous.** Sections [ ] (Buyer's Representations and Warranties), [ ] (Confidential Information), Sections [ ] (Severability), [ ] (Counterparts), [ ] (Amendments), [ ] (No Agency), [ ] (Mobile-Sierra), [ ] (Counterparts), [ ] (Facsimile or Electronic Delivery), Section [ ] (Binding Effect) and [ ] (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**6. U.S. Resolution Stay Provisions.** 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 for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

**7. Governing Law, Jurisdiction, Waiver of Jury Trial.**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this Assignment 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; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this Assignment Agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Southern District of California sitting in the city and county of Los Angeles.

- (c) **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 assignment agreement.

[Remainder of Page Intentionally Blank]

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

[PPA SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CLEAN POWER ALLIANCE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

J. ARON & COMPANY LLC

By: \_\_\_\_\_

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** “PPA” means that certain Power Purchase and Sale Agreement dated [\_\_\_\_], by and between Clean Power Alliance and [\_\_\_\_], as amended from time to time.

“**Assignment Period**” means the period beginning on [\_\_\_\_\_] and extending until [\_\_\_\_\_] , provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

**Assigned Product:** “Assigned Products” includes all (i) Energy and (ii) Green Attributes (PCC1) produced by the Facility.

**Further Information:** PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered 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 J. Aron and Clean Power Alliance upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

**Appendix 2**

**Assigned Prepay Quantity**

[NOTE: To be set forth in a monthly volume schedule.]

### Appendix 3

#### Form of GSG Guaranty

[ ], 2022

NAME  
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “Guarantor”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “Company”), to **COUNTERPARTY NAME** (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Clean Power Alliance dated as of [ ], 2022. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported

assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

**THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.**

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Authorized Officer

**CLEAN ENERGY PROJECT OPERATIONAL SERVICES AGREEMENT**

This Clean Energy Project Operational Services Agreement (this “Agreement”) is made and entered into as of [\_\_\_\_\_] 1, 2022, by and between California Community Choice Financing Authority (“CCCFA”) and Clean Power Alliance of Southern California (“CPA”) with respect to the Clean Energy Project (defined below). CCCFA and CPA may be referred to individually herein as a “Party” and collectively as the “Parties”.

**W I T N E S S E T H:**

WHEREAS, CPA is a “community choice aggregator” under the Public Utilities Code of the State of California, as amended; and

WHEREAS, CPA and certain other community choice aggregators have created CCCFA as a joint exercise of powers authority under and pursuant to the Joint Exercise of Powers Act, constituted as Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended, and a Joint Powers Agreement by and among the Members of CCCFA named therein, including CPA (as the same may be amended or supplemented from time to time in accordance with its terms, the “Joint Powers Agreement”); and

WHEREAS, CCCFA’s purpose is to assist its Members, including CPA, 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 and entering into related contracts with Members; and

WHEREAS, CCCFA and CPA are entering into a Clean Energy Purchase Contract, dated [\_\_\_\_\_] 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Clean Energy Purchase Contract”), pursuant to which CCCFA has agreed to supply Energy to CPA under the terms set forth therein; and

WHEREAS, in order to provide such Energy to CPA under the Clean Energy Purchase Contract, CCCFA is entering into a Master Power Supply Agreement, dated [\_\_\_\_\_] 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Master Power Supply Agreement”), between CCCFA, as buyer, and Aron Energy Prepay [\_\_] LLC, a Delaware limited liability company, as seller (the “Prepaid Seller”), under which it will make a prepayment to the Prepaid Seller for the purchase and delivery of such Energy; and

WHEREAS, the Issuer will finance the prepayment under the Master Power Supply Agreement and related costs by issuing its Clean Energy Project Revenue Bonds, Series 2022[\_\_\_] (the “Bonds”) pursuant to a Trust Indenture, dated as of [\_\_\_\_\_] 1, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Indenture”), between CCCFA and [\_\_\_\_\_] as trustee (together with any successor or replacement trustee under the Indenture, the “Trustee”); and

WHEREAS, the issuance of the Bonds by CCCFA and relating undertakings of CCCFA under the Indenture, the acquisition and sale of Energy and related undertakings of CCCFA under the Master Power Supply Agreement and the Clean Energy Purchase Contract, and the sale to CPA of such Energy and related undertakings of CPA under the Clean Energy Purchase Contract are referred to herein as the “Clean Energy Project”; and

WHEREAS, the Parties are entering into this Agreement in order to provide for the administration of certain operational matters relating to the Clean Energy Project;

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 and not otherwise defined shall have the meanings set forth in the Indenture, the Clean Energy Purchase Contract or the Master Power Supply Agreement, as applicable.

Section 2. Assignment Agreements. As contemplated by the Master Power Supply Agreement and the Clean Energy Purchase Contract, CPA will enter into the Initial Assignment Agreements and may from time to time enter into additional Assignment Agreements to provide for the assignment of Assigned Product for delivery to CCCFA under the Master Power Supply Agreement and to CPA under the Clean Energy Purchase Contract. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, CPA has entered into the Initial Assignment Agreements specified in the Clean Energy Purchase Contract with respect to its entire Contract Quantity;

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

(c) CPA shall determine in its sole discretion when and if any Assignment Agreement is entered into (subject to J. Aron's consent as provided in the Clean Energy Purchase Contract) or terminated (subject to the terms of the Assignment Letter Agreement) and the underlying power purchase 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 Master Power Supply Agreement shall be Scheduled by CPA for delivery to CCCFA under the Master Power Supply Agreement and for delivery to CPA under the Clean Energy Purchase Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to CPA's Assigned Delivery Point and the transfer of other Assigned Product to CPA, 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 CPA.

Section 4. Qualified Use; Remarketing of Base Energy. Any Base Quantities required to be delivered by the Prepaid Seller are required to be remarketed by the Prepaid Seller pursuant to the Master Power Supply Agreement except in the circumstances specified in Section 3.2 of the Master Power Supply Agreement. CPA shall be responsible for any notices or other communications required from CCCFA in connection with such remarketing, as well for communications required for the Scheduling and delivery of Base Quantities under the communications protocol set forth in Exhibit G to the Master Power Supply Agreement and any other operational requirements related to the delivery and remarketing of Base Quantities under the Master Power Supply Agreement. CPA will account for any Base Quantities and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may

be required pursuant to the Qualifying Use Requirements and the terms of the Clean Energy Purchase Contract. CPA 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 delivery and remarketing of Base Quantities, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Master Power Supply Agreement or the Indenture.

Section 5. 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 Master Power Supply Agreement, the Indenture and the Re-pricing Agreement. Provided no event of default has occurred and is continuing with respect to CPA under the Clean Energy Purchase Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by CPA.

Section 6. Re-pricing Information. CCCFA shall provide, or cause Prepaid Seller to provide, to CPA such information as is required to be provided by Prepaid Seller to CCCFA in accordance with the Re-pricing Agreement at such times as are required under the Re-pricing Agreement. Provided no event of default has occurred and is continuing with respect to CPA under the Clean Energy Purchase Contract, any direction, consent, or waiver requested or required to be provided by CCCFA under the Re-pricing Agreement shall only be provided by CCCFA in accordance with written instructions provided by CPA.

Section 7. Project Administration Fee; Reimbursement and Refund of Operating Expenses.

(a) Under the Clean Energy Purchase Contract, CPA is required to include in its payment to CCCFA for [\_\_\_\_\_] of each year commencing [\_\_\_\_\_] 202\_], an annual Project Administration Fee determined by CCCFA based on the budgeted Operating Expenses of CCCFA for the next succeeding annual period, but only to the extent the expected Revenues (as defined in the Indenture) for such annual period will not be sufficient to pay such Operating Expenses as the same become due. CCCFA agrees to allocate amounts received in respect of the Project Administration Fee to pay Operating Expenses (as defined in the Indenture) as the same become due and payable during such annual period to the extent not paid from Revenues. In the event amounts paid in respect of the Project Administration Fee are not sufficient to pay such Operating Expenses when due, CPA agrees to pay such additional amounts as are necessary to pay such Operating Expenses upon receipt of notice of the amount due from the Trustee or CCCFA.

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

Section 8. Notices. Notices and other information to be provided by a Party to the other Party under this Agreement shall be provided in accordance with Article XVI of the Clean Energy Purchase Contract.

Section 9. 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 10. 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: \_\_\_\_\_

CLEAN POWER ALLIANCE OF SOUTHERN  
CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_