



Staff Report Item 14

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer

SUBJECT: California Community Choice Financing Authority Joint Powers Authority (Action Item)

DATE: April 21, 2021

Recommendation

Approve a Resolution authorizing the formation of and membership in the California Community Choice Financing Authority Joint Powers Authority (JPA) to issue municipal bonds for prepay transactions.

Background and Discussion

Prepay Overview:

As has been discussed now at Board and Board Committee meetings, an energy prepayment - or 'prepay' - is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity. This prepayment structure has historically been utilized for natural gas procurement and is now being applied towards renewable energy. EBCE and Silicon Valley Clean Energy (SVCE) are currently jointly preparing a prepay transaction. A number of other CCAs are also in the process of initiating a similar structure.

Issuing Entity Overview:

Prepays utilize the municipal bond market and therefore need a bond issuing entity in order to participate. The issuing entity is the final party to the prepay transaction that EBCE and SVCE need to secure to fully prepare to transact. While there are 'issuers for hire' in the California municipal bond market, there are a number of advantages to CCAs to establish a conduit issuance JPA. The primary reasons are control and oversight in the bond issuance process and cost savings. Utilizing an available issuance JPA can cost in excess of \$200,000 annually.

California Community Choice Financing Authority Overview:

The Joint Exercise of Powers Act, California Government Code Sections 6500 *et seq.* (the “Act”), permits two or more public agencies to create, by agreement, a joint powers authority for the purpose of jointly exercising any common powers and certain additional powers provided for in the Act, including the power to issue bonds for the purposes specified in the Act. EBCE, along with Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (together, “the CCAs”) propose to enter into a Joint Powers Agreement (the “Joint Powers Agreement” or “JPA Agreement”) to create the California Community Choice Financing Authority (the “CCCFA”) to serve as a conduit financing joint powers authority. The CCCFA’s objective will be to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members. By entering in the CCCFA JPA Agreement, EBCE will have the opportunity, but not the obligation, to structure a prepay transaction and issue the bonds through the CCCFA. This will be a project financing based public agency, rather than policy making agency. It is not intended to be a policy-maker nor advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

Membership in the CCCFA will be divided into two tiers: the first tier will consist of Founding Members and the second will consist of Associate Members (as such terms are defined in the Joint Powers Agreement). The Board of Directors of the CCCFA will consist of one representative of each of the Founding Members, which will initially consist of EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy. Each Founding Member shall appoint a Director to represent the Founding Member. The director shall be the Chief Executive Officer (“CEO”) or the designee of the CEO. Associate Members may be added to the CCCFA pursuant to the terms of the Joint Powers Agreement, provided that any such Associate Member possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Associate Members will not have representatives on the Board of Directors.

In the preparation of the proposed JPA Agreement, the CEOs and General Counsels decided to propose that the Directors be administrative staff of the members due to the very technical, project financing (as opposed to policy oriented) purpose of this JPA. Also, it was felt that continuity on the Board will be important due to the fact that the project financing agreements will be long-term obligations, and having directors with a long-term knowledge base will be important to inform the Board’s decision-making.

Pursuant to the Act, and subject to the limitations in Section 6508.1 of the Act, the Joint Powers Agreement specifies that the debts, liabilities and obligations of the CCCFA, including bonds issued by the CCCFA, will not constitute debt, liabilities or

obligations of any member. If a member agency desires to withdraw, it may do so with Board approval as long as (1) a minimum of three Founding Members remain parties to the JPA Agreement, so as not to cause the obligations of the CCCFA to consolidate on any individual member's balance sheet, and (2) the withdrawal shall not result in the dissolution of CCCFA so long as any bonds remain outstanding.

It is important to note that the CCCFA JPA will be the counterparty with the Prepay Supplier in the prepay transaction, and therefore the counterparty to all the underlying agreements. That is, EBCE will sign an agreement with the CCCFA JPA, and the CCCFA JPA will be the entity to sign all the rest of the transaction documents. Under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of EBCE or any representative of EBCE serving on the governing body of EBCE.

Financial Impact

The legal fees associated with the development of the CCCFA JPA amount to a maximum of \$60,000; this fee is to be split by the four Founding Members. The only costs imposed by the JPA Agreement on the members are the administrative costs of CCCFA, which do not include any project costs. The annual fees to maintain the JPA will be shared among Founding and Associate Members. Administrative costs will be paid in accordance with policy that will be developed by the Founding Members. The costs are not substantial as the staffing of this JPA will be limited with most staffing and operating costs supported by individual members. Additional costs will include retaining an independent auditor, administrative costs, and filing fees.

Attachments

- A. Resolution Approving the CCCFA Joint Powers Agreement and Authorizing the CEO to Execute the Agreement P-2018-4 Delinquent Accounts and Collections Policy
- B. California Community Choice Financing Authority Joint Powers Authority Agreement
- C. Presentation

RESOLUTION NO. R-2021-X

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, EBCE, acting pursuant to Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Law”), may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS, EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy desire to create and establish a joint exercise of powers agency pursuant to the JPA Law, such joint exercise of powers agency to be known as the California Community Choice Financing Authority (the “CCCFA”) or by such other name as specified in the JPA Agreement as executed and delivered, for the purpose of establishing an entity to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members; and

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

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board of Directors hereby approves the California Community Choice Financing Authority (CCCFA) Joint Powers Agreement and authorizes the Chief Executive Officer or a designee to execute the attached Agreement with any minor, non-substantive modifications to be approved by General Counsel.

Section 2. The formation of the CCCFA pursuant to the JPA Agreement is hereby authorized and approved.

Section 3. The officers, employees and agents of EBCE are hereby authorized and directed, jointly and severally, to execute and deliver any and all documents, agreements and instruments and to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of the JPA Agreement and this Resolution.

Section 4. All actions heretofore taken by the officers, employees and agents of EBCE with respect to the matters set forth above are hereby approved, confirmed and ratified.

ADOPTED AND APPROVED this 21st day of April 2021.

Dan Kalb, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT

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

WITNESSETH

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

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

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

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

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

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

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

Article I. DEFINITIONS

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

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

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

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

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

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

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

Section 1.07 “**Government Code**” means the Government Code of the State of California.

Section 1.08 “**Member**” means a Founding Member or an Associate Member.

Section 1.09 “**Prepayment Project**” means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA’s approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

Section 1.10 “**Prepayment Project Agreement**” means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

Section 1.11 “**Public CCA Agency**” means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

Section 1.12 “**Founding Member**” means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term “Founding Member” shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast

Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

Section 1.13 “**Public Utilities Code**” means the Public Utilities Code of the State of California.

Article II. FORMATION OF AUTHORITY

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

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

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

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

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

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

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

Article III. MEMBERSHIP

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

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

Section 3.03 Cost Allocations.

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined

by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Agreement.

- (b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Agreement relating to such Prepayment Project.

Section 3.04 Withdrawal or Exclusion of Member.

- (a) Any Member may withdraw from CCCFA upon the following conditions:
 - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;
 - (ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Agreement; and
 - (iii) Prior to the Board accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.
 - (iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Agreement or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Agreement, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project

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

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

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

Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA

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

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

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

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

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

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

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and Controller, neither of whom needs to be a Director. Except where a certified public accountant has been designated as Treasurer of CCCFA, the Board shall appoint the same qualified person to act as both the Treasurer and Controller. Where a certified public accountant has been designated as Treasurer of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code. The Treasurer shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer, the amount of receipts since the last such report, and the amount paid out since the first such report.
- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

Section 4.07 Management of CCCFA. The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CCCFA. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such

employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

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

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

Article V. MEETINGS OF THE BOARD

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

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

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

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

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

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

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

- (i)** Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.
- (ii)** Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (iii)** Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member's governing body.

- (iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

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

Article VI. PREPAYMENT PROJECTS

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

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

Article VII. BONDS AND OTHER INDEBTEDNESS

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

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

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

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

Section 8.02 Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

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

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

ARTICLE X. ACCOUNTS AND REPORTS

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

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

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Conflict of Interest Policy. CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California. Counsel to CCCFA for financing matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

(Seal) Date: _____
Member Name: _____
Attest: Address: _____

(Seal) Date: _____
Member Name: _____
Attest: Address: _____

(Seal) Date: _____
Member Name: _____
Attest: Address: _____

(Seal) Date: _____
Member Name: _____
Attest: Address: _____

Attachment Staff Report Item 14B

(Seal)

Attest:

Date:

Member Name:

Address:

(Seal)

Attest:

Date:

Member Name:

Address:

(Seal)

Attest:

Date:

Member Name:

Address:

(Seal)

Attest:

Date:

Member Name:

Address:



CCCFA JPA Overview

PRESENTED BY: Howard Chang, COO

DATE: April 21, 2021



Energy Prepay Introduction

- An energy prepay transaction - or 'prepay' - is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity
- EBCE is currently in negotiations on an energy prepay transaction jointly with Silicon Valley Clean Energy (SVCE) with Morgan Stanley, who was selected through an RFP.
- The intent of the prepay transaction is to issue tax exempt bonds off balance sheet to prepay energy. As a public agency, EBCE can reduce its procurement costs by utilizing lower cost tax exempt debt.
- This prepay structure has been used historically for natural gas prepayment and is now being applied to energy.
- A number of other CCAs are also in the process of initiating a similar structure.
- The prepay transaction requires the bonds to be issued through an issuance conduit

Bond Issuance Conduit

- Prepays utilize the municipal bond market and therefore need a bond issuing entity in order to participate.
- While there are ‘issuers for hire’ in the California municipal bond market, there are a number of advantages to CCAs to establish a conduit issuance JPA. The primary reasons are control and oversight in the bond issuance process and cost savings. Utilizing an available issuance JPA can cost in excess of \$200,000 annually.
- EBCE, along with Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (together, “the CCAs”) propose to enter into a joint powers agreement (the “Joint Powers Agreement”) to create the California Community Choice Financing Authority (the “CCCFA”) to serve as a conduit financing joint powers authority.
- The CCCFA’s objective will be to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members.
- By entering in the CCCFA JPA Agreement, EBCE will have the opportunity, but not the obligation, to structure a prepay transaction and issue the bonds through the CCCFA.
- This will be a project financing based public agency, rather than policy making agency. It is not intended to be a policy-maker nor advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

JPA Details

- Membership in the CCCFA will be divided into two tiers:
 - Founding Members will hold voting rights
 - Associate Members will join the JPA for the purpose of issuing bonds through the conduit for their respective prepays and will have limited voting rights
- The Board of Directors of the CCCFA will consist of one representative of each of the Founding Members, which will initially consist of EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.
- Associate Members may be added to the CCCFA pursuant to the terms of the Joint Powers Agreement, provided that any such Associate Member is a CCA and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes.
- Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents.
 - We proposed that the directors be administrative staff of the members due to the very technical nature of this JPA which is project financing rather than policy oriented and continuity on the Board is important due to the fact that the project financing agreements will be long-term obligations

Limitations of liability

- Under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of EBCE or any representative of EBCE serving on the governing body of EBCE.
- If a member agency desires to withdraw, it may do so with board approval as long as the founding members retain a minimum of three members, so as not to cause the obligations of the CCCFA to consolidate on any individual members balance sheet.
- The CCCFA JPA will be the counterparty with the Prepay Supplier in the prepay transaction, and therefore the counterparty to all the underlying agreements. That is, EBCE will sign an agreement with the CCCFA JPA, and the CCCFA JPA will be the entity to sign all the rest of the transaction documents.
- The legal fees associated with the development of the CCCFA JPA are \$60,000, which is to be split by the four Founding Members.
- The only costs imposed by the JPA Agreement on the members are the pass-through administrative costs of CCCFA, which do not include any project costs. These annual fees to maintain the JPA will be shared among Founding and Associate Members. Administrative costs will be paid in accordance with policy that will be developed by the founding members. The costs are not substantial as the staffing of this JPA will be limited with most staffing and operating costs supported by individual members. Additional costs will include retaining an independent auditor, administrative costs, and filing fees.

Appendix



Prepay Overview

Presentation Provided at Jan 29,
2021 Board Meeting with minor
revisions to reflect updated status



Prepay Overview

Structure:

- Term: Typically 30-year term
- Transacting Parties:
 1. Tax-exempt Load Serving Entity (LSE, also called “Prepay Buyer”)
 2. Taxable financial counterparty (bank, called “Prepay Supplier”)
- Process:
 1. Prepay Supplier assigned into existing energy supply contract(s) held by LSE
 2. Municipal bonds issued by conduit, amounting to combined notional value of assigned contracts
 3. Prepay Supplier pays the contract price to PPA Seller, immediately transferring all electricity and attributes to LSE
 4. LSE pays the Prepay Supplier at discounted rate, achieving procurement cost savings
- Takeaway: Prepay Supplier is effectively the energy supplier and is prepaid for future energy deliveries. The prepay supplier holds and utilizes capital and provides a discount to the Prepay Buyer that is enabled via the spread between the taxable and tax exempt borrowing costs.

Benefits:

- **Lower energy procurement costs**: Savings over 30-year term estimated to be 8-12% per year on power quantities delivered under prepay, compared to spot market purchases and current contracts; subject to change based on market conditions at the time that the bond is issued.

Risks:

- **Regulatory**: Addressing risks related to compliance with SB350 and Emissions Performance Standard (i.e. receipt of PCC1 RECs, no disruption to deliveries); specific risks and remediations will be addressed when final prepay transaction is brought to the Board for approval in coming months.

Prepay Overview, Cont.

Further Details on Energy Prepayment Transactions:

- An energy prepayment is a long-term non-recourse financial transaction between a tax-exempt Load Serving Entity (LSE) and a taxable financial counterparty (bank, called “Prepay Supplier”) utilizing the municipal bond market.
 - LSE committing total of ~\$600MM-\$800MM of energy supply contracts (combined contract notional values)
 - LSE utilizes prepay in order to lower customer energy costs
- Municipal utilities (and tax-exempt entities such as CCAs) in the US can prepay for a supply of electricity or natural gas from a taxable entity and fund that prepayment with tax-exempt municipal bonds. The LSE must sell the commodity to their retail end-users residing within their traditional service area.
 - This structure is well known and regularly used for gas and is now being applied towards renewables PPAs
 - Codified in US Tax Law. Since first prepayments of natural gas were done in the early 1990s, the IRS issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327)

Key Elements of a Prepay Transaction

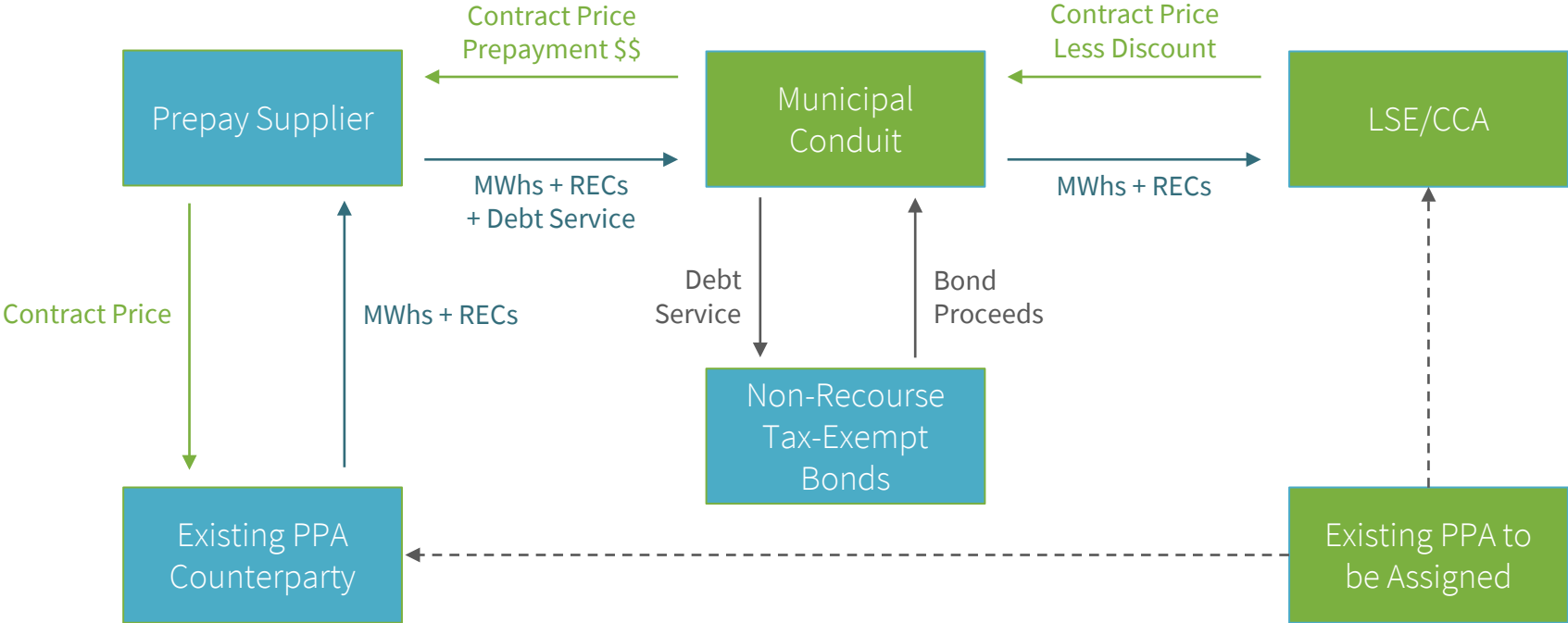
Power Contract Assignment:

- Existing renewable PPAs are assigned to the taxable Prepay Supplier. The LSE continues to **take and pay** for energy and attributes delivered through the contract.
- All other terms of the PPA are unchanged.
- If the prepay program terminates early, Prepay Supplier fails to perform, or LSE fails to perform, the LSE forgoes the future savings and the assigned PPA contract is put back to the original LSE.

Debt:

- Non-Recourse: Prepays utilize non-recourse municipal bonds and are **not** secured or guaranteed by the referenced entity (i.e. the CCA). Rather the debt is recourse to the Prepay Supplier. This significantly protects the CCA and mitigates risk related to the payment of power contracts novated through the prepay.
- Off Balance Sheet for LSE: Bonds are issued by a municipal bond conduit.

Prepay Structure



Market Statistics

- Nationwide: 90+ municipal transactions
 - \$50+ Billion combined notional contract value
- California: 11 municipal transactions
 - \$5.7 Billion combined notional contract value
- Active Suppliers: Goldman Sachs, Morgan Stanley, Royal Bank of Canada, Citi, TD Securities
 - All investment grade rated financial institutions
- Resource Types:
 - Majority of transactions to date have been exclusively for natural gas, remainder including an electricity ‘switch’ at a certain year.
 - The same tax law and similar transaction structure enables the program for electricity from renewables contracts, as well. The market is seeing activity and preparation for these transactions, particularly from CCAs.

Benefits

- ✓ Savings over the 30-year term expected to be 8% - 12% per year on power quantities delivered under the pre-pay structure compared to spot market purchases / current contracts
- ✓ Favorable risk allocation where EBCE only pays for energy that is delivered (same as contracts today)
- ✓ Debt is non-recourse to EBCE
- ✓ Rating agencies comfortable with comparable deals at SMUD, SCPPA, others

Risks

- Loss of savings and back to square one*
- Lost investment of staff time*
- Loss of spent out-of-pocket costs \$25-50k*
 - Consultants all contingent on successful deal
 - Consultants are all paid from deal proceeds vs. EBCE directly

**Note: these risks are only relevant if the transaction does not materialize or dissolves*

- Opportunity cost of higher savings through a prepay transaction initiated at a different time

Timeline

November 2019 through September 2020:

- Got enabled with legal and advisory representation
- Began structuring and document negotiations with Morgan Stanley

Oct. – May 2021:

- Continued document negotiations, preparation
- Identification and prelim assignment discussion of power supply contracts
- Documents ready to execute in coming months

Bond raise and initiation of prepay could occur anytime in next 3-6 months

Factors That May Impact Timing:

- Markets: Taxable vs. tax-exempt spreads need to exist in a meaningful way to achieve discounts we are seeking, and current rate environment is not optimal though market conditions are rapidly improving. Important to get docs in place to be able to transact quickly when markets open back up, though market conditions could delay timeline of deal execution.
- Assignment Consents: Still need to identify commodity transactions for assignment, and timeliness of consents could extend the timeline of deal execution.

EBCE Prepay Parties

Counsel: Orrick, Herrington & Sutcliffe (Bond & Tax) | Chapman & Cutler LLP (Disclosure & Issuer's)

- Both firms selected through solicitation issued June 2020

Prepay Seller: Morgan Stanley

- Selected through solicitation issued November 2019
- *Note: No legal obligation or liabilities are being entered into currently; approval of counsel allows EBCE to negotiate documents with Morgan Stanley for which staff will later return to the Board for approval of the official prepay transaction and associated bond issuance.*

Joint Prepay Buyer: Silicon Valley Clean Energy

- EBCE and SVCE issued the RFP together, are preparing a joint transaction in which both CCAs assign contracts, share costs and benefits; SVCE is seeking their Board's approval for associated items later this year.

Municipal Financial Advisor: PFM

- Selected through solicitation issued September 2020

Bond Issuer: California Community Choice Financing Authority

- Currently seeking approval for formation among CCAs