

PREPAID CLEAN ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Clean Energy Project Administration Agreement (this “Agreement”) is made and entered into as of [____], 2024, by and between California Community Choice Financing Authority (“CCCFA”) and the City of San José, a California municipal corporation (the “City”) with respect to the Clean Energy Project (defined below). CCCFA and the City 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, the City is a “community choice aggregator” under the Public Utilities Code of the State of California, as amended; and

WHEREAS, CCCFA is 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 (the “Joint Powers Act”), and pursuant to a Joint Powers Agreement by and among the Members of CCCFA named therein, including the City (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 the City, 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 the City are entering into a Power Supply Contract, dated as of [____], 2024 (as amended, restated, supplemented or otherwise modified from time to time, the “Power Supply Contract”), pursuant to which CCCFA has agreed to supply Energy to the City under the terms set forth therein; and

WHEREAS, in order to provide such Energy to the City under the Power Supply Contract, CCCFA is entering into a Prepaid Energy Sales Agreement, dated [____], 2024 (the “Prepaid Agreement”), between CCCFA, as buyer, and Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company, as seller (“MSES”), under which it will make a prepayment to the MSES for the purchase and delivery of such Energy; and

WHEREAS, in order to meet its obligations under the Prepaid Agreement, MSES will enter into an Energy Management Agreement, dated as of [____], 2024 (as amended, restated, supplemented or otherwise modified from time to time, the “EMA”) with Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”); and

WHEREAS, the Issuer will finance the prepayment under the Prepaid Agreement and related costs by issuing its Clean Energy Project Revenue Bonds, Series 2024[___] (the “Bonds”) pursuant to a Trust

Indenture, dated as of [____], 2024 (as amended, restated, supplemented or otherwise modified from time to time, the “Trust Indenture”), between CCCFA and U.S. Bank Trust Company, National Association, as trustee (together with any successor or replacement trustee under the Trust Indenture, the “Trustee”); and

WHEREAS, the purchase of Energy and related undertakings of CCCFA under the Prepaid Agreement and the Power Supply Contract, and the sale to the City of such Energy and related undertakings of the City under the Power Supply 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 and the Bonds;

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 Trust Indenture, the Power Supply Contract or the Prepaid Agreement, as applicable.

Section 2. Assignment Agreements. As contemplated by the EMA, the Prepaid Agreement and the Power Supply Contract, the City will enter into the Initial Assignment Agreement 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 Prepaid Agreement and to the City under the Power Supply Contract. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, the City has entered into the Initial Assignment Agreement specified in the Power Supply Contract;

(b) subject to the terms of the Assignment Letter Agreement, the City may from time to time enter into additional Assignment Agreements with respect to all or a portion of the Contract Quantity that is Base Energy as specified in the Power Supply Contract from time to time; and

(c) subject to the terms of the Assignment Letter Agreement, the City shall determine in its sole discretion when and if any Assignment Agreement is entered into or terminated and the underlying power purchase agreement and the portion of the Contract Quantity that is then Base Energy to which such Assignment Agreement will relate.

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Agreement shall be Scheduled by the City for delivery to CCCFA under the Prepaid Agreement and for delivery to the City under the Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to the City’s Assigned Delivery Point and the transfer of other Assigned Product to the City, 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 the City.

Section 4. Qualified Use; Remarketing of Base Energy. Any Base Energy required to be delivered by MSES is required to be remarketed by MSES pursuant to the Prepaid Agreement. the City shall be responsible for any notices or other communications required from CCCFA in connection with such remarketing, as well as communications required for the Scheduling and delivery of Base Energy under the Prepaid Agreement and any other operational requirements related to the delivery and remarketing of Base Energy under the Prepaid Agreement. The City will account for any Base Energy 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 Power Supply Contract. The City 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 Energy, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Prepaid Agreement or the Trust 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 Prepaid Agreement, the Trust Indenture and the Re-Pricing Agreement. Provided no event of default has occurred and is continuing with respect to the City under the Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by the City.

Section 6. Re-Pricing Information. CCCFA shall provide, or cause MSES to provide, to the City such information as is required to be provided by MSES to CCCFA in accordance 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 the City under the Power Supply 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 the City.

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

(a) Under the Trust Indenture, Operating Expenses relating to the Clean Energy Project are to be paid from amounts deposited annually in the Administrative Fee Fund, which amount shall be equal to \$[] in the aggregate for each annual period ending on [] 1 of each year (the "Project Administration Fee"). If at any time the amount on deposit in the Administrative Fee Fund is not sufficient to pay all such Operating Expenses as the same become due, the City agrees to pay to the Trustee such 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 the City and include the amount of such excess in its Annual Refund to the City under the Power Supply 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 Power Supply Contract.

Section 9. Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of the City under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of City, payable solely from CCA Revenues and do not constitute a debt of the City or the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, and do not constitute obligations for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

Section 10 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 11. 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: _____

CITY OF SAN JOSE, a CALIFORNIA municipal
corporation

By: _____
[Name]
Director of Finance

APPROVED AS TO FORM:
Nora Frimann, City Attorney

By: _____
Rosa Tsongtaatarii
Chief Deputy City Attorney