CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Drew Corbett
Zachary Struyk

SUBJECT: **See Below**

DATE: September 16, 2024

Approved Jennifer A. Maguire

Date: 9/26/24

COUNCIL DISTRICT: Citywide

SUBJECT: Approval of the Power Supply Contract and Certain Other Documents in Connection with the Issuance and Sale of One or More Series of California Community Choice Financing Authority Clean Energy Project Revenue Bonds (Green Bonds)

RECOMMENDATION

Adopt a resolution approving, in connection with the issuance and sale of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds (Green Bonds) in an aggregate principal amount not-to-exceed $1,250,000,000 to finance the acquisition of a long-term supply of electricity on a prepaid basis for the City of San José on a prepaid basis, in substantially final form, Appendix A to an Official Statement, a Power Supply Contract, a Custodial Agreement, a Letter Agreement, and a Prepaid Energy Project Administration Agreement; and authorizing the City Manager and other authorized officers of the City to execute and deliver such documents and any other related documents in connection therewith.

SUMMARY AND OUTCOME

Approval of these recommendations is necessary for the California Community Choice Financing Authority (CCCFA) to issue and sell California Community Choice Financing Authority Clean Energy Project Revenue Bonds (Green Bonds) (referred to as Bonds), that do not constitute a debt, liability, or obligation to the City. The proceeds of the Bonds will be used by CCCFA to make a one-time, upfront prepayment to Morgan Stanley Energy Structuring, L.L.C. (MSES) for a long-term supply of electricity that will be delivered by MSES to CCCFA and ultimately redelivered to the City, at a discount, by CCCFA. The City will assign certain rights and obligations under power purchase agreements entered into for the San José Clean Energy (SJCE) program to MSES or its affiliate, Morgan Stanley Capital Group Inc. (MSCG), that will serve as the primary source of electricity delivered to the City under the transaction. MSES and MSCG are wholly-owned subsidiaries of Morgan Stanley, a Delaware corporation (Morgan Stanley.) Morgan Stanley & Co. LLC, the underwriter of the Bonds, is also a wholly-owned subsidiary of Morgan Stanley.

The City will only be authorized to enter into the transaction if the annual savings are equal to at least 8% of the cost of the prepaid quantities of energy scheduled to be delivered under the power supply contract as described herein, during the initial reset (or pricing) period (Initial Term.) The Initial Term is estimated to be approximately six to eight years from the date the Bonds are initially issued. The actual Initial Term and annual savings will depend on market conditions at time of sale of the Bonds, subject to the required minimum annual savings of 8% of the costs of the energy assigned by the City. The required minimum annual savings are approximately in the range between $3 million to $6 million depending on the market conditions. If the transaction terminates early for any reason, the City will forgo future savings and any assigned power purchase agreements will be put back completely to the City; essentially, conditions revert to the status quo of today.

BACKGROUND

SJCE was formed by the City Council in May 2017, pursuant to Title 26, Community Energy, of the San José Municipal Code. SJCE was formed to support the City's transition to clean energy and provide its residents and businesses local control over electricity prices, resources, and quality of service. SJCE was also formed to provide the City with a tool to meet its renewable energy, energy efficiency, and ultimate greenhouse gas emission reduction goals.

SJCE became fully operational by February 2019, supplying energy to business and residential customers within the City jurisdictional boundaries. SJCE sources electricity from clean resources, such as solar and wind, through fixed- and variable-priced power purchase agreements of different terms. The City uses a portfolio risk-management approach in its power purchasing program, seeking low-cost supply as well as diversity among technologies, production profiles, project sizes and locations, counterparties, length of contract, and timing of market purchases. The City has a mix of short-, medium-, and long-term contracts for various power products, including energy, capacity, and green attributes. As of June 30, 2024, the City had a total of 117 power purchase agreements relating to SJCE in the forward portfolio with a notional value of approximately $3.57 billion to provide energy to SJCE customers for the remainder of calendar year 2024 and through 2047. Of these agreements, only long-term power purchase agreements for projects in operation are eligible for assignment in the financing.

On November 14, 2023, the City Council authorized the Finance and Energy Departments to enroll the City as a member of CCCFA and evaluate the feasibility of reducing SJCE's power purchase costs by financing a prepayment for energy procured with long term power purchase agreements through the issuance of tax-exempt bonds by CCCFA. CCCFA approved the City's associate membership on May 23, 2024.

CCCFA is a joint exercise of powers authority whose members consist of the City of San José, Ava Community Energy Authority (formerly East Bay Community Energy Authority), Central Coast Community Energy, Clean Power Alliance of Southern California, Marin Clean Energy, Pioneer Community Energy, and Silicon Valley Clean Energy Authority. CCCFA is organized and existing pursuant to the laws of the State of California with the power to issue the Bonds and enter into the documents related thereto described herein. CCCFA is authorized to exercise the common powers of its members and to undertake all actions permitted by the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, including the purchase of the energy from MSES and the sale of the energy to the City. Various community choice aggregators have entered into prepaid energy transactions, involving the issuance of tax-exempt bonds by CCCFA as the conduit issuer. Since 2021, community choice aggregators have completed 12 transactions with a total par amount in excess of $11.3 billion.

ANALYSIS

The following sections support staff's recommendation to adopt the proposed resolution of the City Council and includes discussions regarding the Clean Energy Project (as defined below), description of the Bonds, designation of the Bonds as "Green Bonds," documents relating to the Bonds and the Clean Energy Project, financing team participants, and currently expected financing schedule.

Clean Energy Project Financing Structure

CCCFA will issue tax-exempt bonds to make a prepayment to acquire a 30-year supply of energy to be delivered in specified quantities (Prepaid Quantities) under an agreement for MSES to sell prepaid energy to CCCFA (Prepaid Energy Sales Agreement.) CCCFA and the City will enter into a contract for the sale and delivery of the Prepaid Quantities to the City, at a discount, by CCCFA (Power Supply Contract.) The prepayment for the Prepaid Quantities and the sale thereof to the City, and the entry into the related agreements described herein is sometimes referred to below as the Clean Energy Project. The payment obligations of MSES under the Prepaid Energy Sales Agreement will be unconditionally guaranteed by Morgan Stanley.

To facilitate the Clean Energy Project, the City will assign a portion of its rights and obligations to receive specified quantities of energy that comply with California's Emissions Performance Standards (EPS Compliant Energy) under existing and future power purchase agreements (PPAs) to MSES (or, if MSCG is not the seller under the applicable PPA, to MSCG for redelivery to MSES.) MSES will be obligated to deliver such assigned EPS Compliant Energy to CCCFA under the Prepaid Energy Sales Agreement. CCCFA will then deliver such EPS Compliant Energy to the City under the Power Supply Contract.

When an assigned PPA expires or terminates, the City will be required to use commercially reasonable efforts to assign one or more replacement PPAs for the delivery of EPS Compliant Energy at least equal to the Prepaid Quantities. If the energy delivered to MSES under the assigned PPAs is less than the quantities specified in the Prepaid Energy Sales Agreement, MSES will be obligated to make provisional payments to CCCFA for energy not delivered and remarket or be deemed to have purchased for its own account base energy not taken by the City. In the event provisional payments are made and the annual contract quantity of energy is not delivered for a calendar year, the City will be required to use commercially reasonable efforts to remediate all or a portion of such provisional payments by making other qualifying purchases of electric energy. To the extent that provisional payments that are required to be remediated are not remediated in the amounts and within the time limits prescribed by certain federal tax laws relating to the Bonds, the transaction could terminate. If the transaction is terminated, MSES would be required to make a termination payment (Termination Payment) to CCCFA to redeem the Bonds.

The scheduled amount of the Termination Payment, together with the amounts required to be on deposit in certain funds and accounts held by the trustee under the trust indenture relating to the Bonds, will be calculated to provide a sum at least sufficient to pay the purchase price or the redemption price of the Bonds, assuming that MSES and others pay and perform their respective contractual obligations when due, or in the event of nonpayment by MSES, payment by Morgan Stanley, under certain guarantees.

CCCFA will enter into commodity swaps (CCCFA Commodity Swaps) to facilitate its ability to sell specified energy quantities required to be delivered to the City at market index prices, while ensuring that the net revenues from the payment for the energy equal or exceed debt service on the Bonds irrespective of the index price of energy at the time. Quantities, term, and delivery points for the CCCFA Commodity Swaps will mirror those of commodity swaps to be entered into by MSES and the same counterparties. The City will not be a party to any swaps entered into as part of the Clean Energy Project.

CCCFA will sell the Prepaid Quantities actually delivered to CCCFA to the City under the Power Supply Contract on a pay-as-you-go basis. The Prepaid Energy Sales Agreement and the Power Supply Contract are structured and conditioned on the City assigning its rights to the delivery of EPS Compliant Energy under existing and future power purchase agreements to MSES or to MSCG, as described above.

The cumulative effect of the Prepaid Energy Sales Agreement, CCCFA Commodity Swaps, Power Supply Contract and related documents will enable the City to purchase EPS Compliant Energy at a discount from CCCFA, compared to existing fixed contract prices or to market prices. The resulting monthly net revenues, regardless of changes in energy prices, are expected to be adequate to pay debt service requirements on the Bonds and program expenses when due. For a detailed diagram of the transaction structure, see the **Attachment** to this memorandum.

CCCFA will issue the Bonds in the not-to-exceed principal amount of $1,250,000,000 to fund the prepayment to MSES, pay capitalized interest, and pay costs of issuance. The Bonds may be issued in multiple series or subseries bearing fixed or variable rates of interest and will be issued for a 30-year term. During the Initial Term (currently estimated between six and eight years), the City will purchase Prepaid Quantities actually delivered at annual savings of at least 8% of the cost of the assigned energy (equal to approximately $3 million - $6 million of savings annually.) These savings to the City are net of all costs of issuance of the Bonds.

Current interest rate market dynamics do not allow the City to attain desired savings targets with a 30-year bond transaction. Savings targets are currently achievable with a shorter six to eight year bond transaction. The Bonds will be subject to mandatory tender on the day following the end of the Initial Term (Mandatory Purchase Date.) On or before the Mandatory Purchase Date, outstanding Bonds are anticipated to be remarketed and various pricing terms for the sale of the remaining Prepaid Quantities to the City, including the monthly and annual discount for future reset periods will be reset. This process is anticipated to occur several times prior to the final maturity of the Bonds (currently estimated to occur in 2054.)

On the initial issue date of the Bonds, CCCFA and MSES will enter into a re-pricing agreement (Re-Pricing Agreement), which provides for, among other matters, the determination of the amount of the monthly and annual discount that will be available for each reset period after the Initial Term for sales of Prepaid Quantities to the City under the Power Supply Contract during each such period, and determination of the length of such reset periods.

The minimum annual discount for energy to be purchased by the City under the Power Supply Contract after the Initial Term will be determined in connection with the initial issuance of the Bonds. The minimum annual discount for reset periods after the Initial Term is expected to be approximately five dollars per megawatt-hour. If the minimum discount is not met through the repricing process for a reset period, the City will have the option to have all Prepaid Quantities to be delivered during that reset period remarketed to one or more other purchasers (Remarketing Election.) If the City makes a Remarketing Election for a reset period, it will not be obligated to purchase the Prepaid Quantities delivered during that reset period and the limited assignment agreements previously entered into by the City with MSES or MSCG will terminate. However, if the minimum discount is met through the remarketing process for a subsequent reset period, the City will be obligated to resume purchasing Prepaid Quantities delivered under the Power Supply Contract. If the City makes a Remarketing Election for any reset period, then MSES will have the option to terminate the Prepaid Energy Sales Agreement, which election will result in a requirement that MSES make a Termination Payment to redeem the Bonds.

Holders of the Bonds will have No Recourse to the City**.** The Bonds will be special, limited obligations of CCCFA, payable solely from and secured solely by the trust estate described in the trust indenture relating to the Bonds, in the manner and to the extent provided for therein.

The payment of the Bonds will not be guaranteed by the City, CCCFA, MSES, MSCG or Morgan Stanley. The Bonds will not constitute a general obligation or indebtedness of CCCFA or the City, and neither the full faith and credit of CCCFA nor the taxing power of the state or any political subdivision thereof, including the City, will be pledged to payments pursuant to the indenture or the Bonds.

The payments required to be made by the City under the Power Supply Contract, together with any net amounts received by CCCFA under the CCCFA Commodity Swaps and the interest rate swap to be entered into by CCCFA, to the extent any of the Bonds bear interest at a variable rate, will constitute the primary and expected source of the revenues pledged to the payment of the Bonds. The obligations of the City under the Power Supply Contract will be payable solely from revenues of the City derived from the operations of SJCE.

The City's obligations under the Power Supply Contract will include payments for energy purchases and true ups. In addition, the City will covenant to provide certain annual operating and financial information regarding SJCE which information will enable CCCFA to comply with CCCFA's commitment to provide continuing disclosure for the benefit of the beneficial owners of the Bonds.

City Considerations**.** While holders of the Bonds will have no recourse to the City, the City's ability to benefit from the savings generated by the transaction structure may be compromised under certain circumstances. These circumstances are described below. It is important to note that, if these risks occur, the PPAs revert back to the structure the City has today (i.e., the status quo.)

- Volumetric risk is the risk that the PPA seller fails to provide the required energy volumes to sustain the transaction. This risk may be mitigated in three ways. First, the City will assign an amount of the PPA contract energy volume which it has a high confidence of being generated each year into the prepay to hedge against potential under-generation (approximately 80%-90% of the guaranteed contract volume). The City (through SJCE) has entered into a number of PPAs from projects which are in operation, and the recommendation of which PPA(s) and how much volume from each PPA to be assigned to the Clean Energy Project will be brought to SJCE's Risk Operating Committee for consideration. Next, the deal structure allows the City to substitute or add additional assignments of PPAs to MSES (or MSCG) to sustain the required volumes of delivered energy. Finally, the Prepaid Energy Sales Agreement provides a mechanism to for MSES to back stop under-generating developers with base energy in the event of an outage or other unplanned event.

- Market risk may occur at some point during the proposed 30-year term of the Power Supply Contract if re-pricing fails to generate the minimum discount or if the Prepaid Energy Sales Agreement should terminate prior to the end of the proposed term. In either case, if the Prepaid Energy Sales Agreement terminates, the previously assigned rights under assigned PPAs will revert to the City. In such event, the City will have incurred costs in the form of staff time and consultant and legal fees without realizing a discount on the purchase of energy relative to contract or market prices during the stated 30-year term of the Power Supply Contract.

- Counterparty/financial risk exists should the banking or swap counterparty experience distress and fail to honor its swap or, in the case of Morgan Stanley for these Bonds, fails to honor its guarantees for payment obligations of MSES under the Prepaid Energy Sales Agreement, commodity swaps and interest rate swaps. Morgan Stanley is currently rated "A1" by Moody's, "A-" by S&P and "A+" by Fitch. There will be two swap counterparties in this transaction, Natixis and RBC, to mitigate the risk of swap counterparty failure.

Should the City encounter any of the risk factors and/or the energy prepayment transaction is terminated for any reason, the City will not realize the full savings that were anticipated to accrue to the City over the entire 30-year term of the Power Supply Contract and staff time, consultant and legal fees, and other expenses will be sunk costs as to any unrealized discount.

Description of the Bonds

Overview. The Bonds may be issued in one or more series, including a fixed rate and potentially two variable rate series, each of which would be subject to mandatory tender for purchase at the end of the Initial Term. As of the date of this memorandum, it is not anticipated that variable rate Bonds will be issued. However, if market conditions change one or more variable rate series may be issued by CCCFA.

Estimated Sources and Uses of Funds. Provided below are the estimated sources and uses of funds for the Bonds, which assume only a fixed rate series of Bonds as noted above, based on market conditions as of August 28, 2024.

California Community Choice Financing Authority
Clean Energy Project Revenue Bonds (Green Bonds)
Estimated Sources and Uses of Funds*

Source of Funds	
Par Amount of Bonds	$1,000,905,000
Premium	80,902,601
Total Sources	$1,081,807,601
Use of Funds	
Acquisition of the Clean Energy Project	$1,025,074,098
Capitalized Interest	49,473,012
Cost of Issuance ($2.021/$1,000)	2,022,529
Underwriter's Discount	5,237,962
Total Uses	$1,081,807,601

* Preliminary, subject to change.

Good Faith Estimates. Morgan Stanley provided the following good faith estimates for the Bonds in compliance with Section 5852.1 of the California Government Code, all of which are subject to changing market conditions and may be higher or lower than estimated.

- True interest cost for the Bonds is approximately 3.96%, assuming market conditions as of August 28, 2024.
- The finance charge for the Bonds is estimated to be $7,260,491, which is composed of costs of issuance totaling $2,022,529 (i.e., bond counsel and disclosure counsel fees and expenses, municipal advisor fees and expenses, rating agencies fees, fiscal agent fees and expenses, and printing costs) and $5,237,962 for underwriter's discount.
- Estimated proceeds of the Bonds expected to be deposited into the project fund, net of proceeds for costs of issuance as noted above, and capitalized interest: $1,025,074,098.
- Total payment amount (principal and interest), not paid with proceeds of the Bonds, is estimated to be $1,385,069,923 to the Mandatory Purchase Date.

Designation as Green Bonds

On July 12, 2024, the City released a request for proposals to solicit proposals from qualified firms interested in providing a second party opinion as to the designation of the Bonds as “Green Bonds” due to the proposed use of the net proceeds to prepay the cost of EPS Compliant Energy. On July 26, 2024, the City received proposals from seven firms. Based on the statement of qualifications provided by the proposers, the request for proposals evaluation committee, in accordance with the selection process and evaluation criteria selected Kestrel. Kestrel will provide a second party opinion to be attached to the Preliminary Official Statement and final Official Statement for the Bonds.

Appendix A of the Official Statement

The Preliminary Official Statement will be posted to the agenda webpage for this meeting to provide the City Council with more detailed information on the structure of the Clean Energy Project, including the agreements the City will be required to execute and deliver in connection with the Bonds.

City staff, including members of SJCE, with the assistance of the City’s disclosure counsel, prepared Appendix A containing certain information regarding the City and SJCE, for inclusion in the Preliminary Official Statement and the Official Statement for the Bonds. Pursuant to the City’s Administrative Disclosure Policies and Procedures for Municipal Debt, Appendix A was reviewed and approved for transmittal to the City Council by the Disclosure Working Group on September 25, 2024. The distribution of the Preliminary Official Statement is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Bonds.

The Securities and Exchange Commission issued guidance as to the duties of the City with respect to its approval of the Preliminary Official Statement. If the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Bonds, he or she should endeavor to discover whether such facts are adequately disclosed. Appendix A provides background on the formation of the SJCE program, service area, customers, sources of clean energy, and other information to inform bondholders on the financial and operational strength of the City.

Staff recommends that the City Council approve Appendix A in substantially the form posted to the agenda webpage for this meeting, with such additions thereto or changes therein as any of the authorized officers, acting alone, shall deem necessary, desirable, or appropriate upon consultation with the City Attorney. Staff carefully reviewed the information contained in the draft Appendix A and believes it to be accurate and complete in all material aspects. Staff further recommends the authorized officers be authorized and directed, each acting alone, for and on behalf of the City, pursuant to the authorizing resolutions, to deliver Appendix A with such additions thereto or changes therein, as necessary.

If any City Councilmember has personal knowledge that any of the material information in Appendix A is false or misleading, the City Councilmember must raise these issues prior to approval of the distribution of the document to potential investors in the Bonds.

Legal Documents

The City is a party to a subset of legal documents required for the Clean Energy Project. While the City is not a party to many of the agreements, the following descriptions provide more detail and context on the various transaction documents that impact the City as a participant and beneficiary of the Clean Energy Project.

<u>Clean Energy Project Documents</u>

Prepaid Energy Sales Agreement

- Prepaid Energy Sales Agreement between CCCFA and MSES for CCCFA to make the prepayment for the Prepaid Quantities and for MSES to deliver the Prepaid Quantities to CCCFA on a monthly basis. The terms of this agreement are consistent with the terms of the Power Supply Contract between CCCFA and City.

Power Supply Contract

- Power Supply Contract between CCCFA and the City to provide for the sale and delivery of Prepaid Quantities of EPS Compliant Energy actually delivered to CCCFA to the City for the term of the Bonds.

Limited Assignment Agreement Forms

- Proposed forms of Limited Assignment Agreement, among the City, MSCG or MSES, and the third-party energy suppliers to assign the City's long-term power purchase agreements to MSCG or MSES.

PPA Payment Custodial Agreement

- Custodial Agreement by and among CCCFA, the City, MSCG, MSES and U.S. Bank Trust Company, National Association or such other custodian named therein, as custodian, relating to payments to be made to third party energy supplier for assigned power purchase agreements.

Letter Agreement

- Letter Agreement among MSES, MSCG, the City and CCCFA specifying the terms of assigning long term power purchase agreements that the City has with a current or future third-party energy supplier.

Prepaid Energy Project Administration Agreement

- Prepaid Energy Project Administration Agreement by and between CCCFA and the City to provide for the administration of certain operational matters during the term of the Bonds relating to certain rights and obligations of CCCFA under the Trust Indenture, the Prepaid Energy Sales Agreement, the Re-Pricing Agreement, and other related documents.

Re-Pricing Agreement

- Re-Pricing Agreement between CCCFA and MSES to provide for repricing of the Bonds after the Initial Term, and the terms of calculation of future energy price discounts that will be offered to the City in connection with the repricing of the Bonds.

<u>Bond Document</u>

Trust Indenture

- The Trust Indenture between CCCFA and U.S. Bank Trust Company, National Association or other trustee named therein, as trustee, sets forth the terms of the Bonds, rights of holders of the Bonds, and security of the Bonds.

Key Financing Team Participants

- Issuer: California Community Choice Financing Authority
- City's Municipal Advisors: PFM Financial Advisors LLC
Public Resources Advisory Group
- Bond Counsel: Orrick, Herrington & Sutcliffe LLP
- Disclosure Counsel: Anzel Galvan LLP
- Underwriter: Morgan Stanley & Co. LLC

- Trustee: U.S. Bank Trust Company, National Association
- Green Bonds Reviewer: Kestrel

Financing Schedule

The following is the estimated financing schedule. The bond sale is dependent upon the market condition. The City will only execute the transaction if the annual savings are equal to at least 8% of the cost of the Prepaid Quantities of energy scheduled to be delivered under the Power Supply Contract during the Initial Term.

City Council:	October 8, 2024
Rating from Moody's:	October 23, 2024
CCCFA Board:	October 24, 2024[1]
Bond Pricing (expected):	October 31, 2024
Bond Closing (expected):	November 14, 2024

Climate Smart San José

The issuance of the Bonds has no direct effect on Climate San José energy, water or mobility goals. However, the savings realized by the City through the energy prepayment transaction can be returned to ratepayers in the form of lower rates and/or invested in new SJCE programs to achieve emission reductions targeted in the Climate Smart San José Plan.

EVALUATION AND FOLLOW-UP

This memorandum presents a recommendation for the City Council to approve, in connection with the issuance and sale of the Bonds by CCCFA, in substantially final form, Appendix A to the Official Statement, a Power Supply Contract, a Custodial Agreement, a Letter Agreement, and a Prepaid Energy Project Administration Agreement; and to authorize the City Manager, and other authorized officers of the City, to execute and deliver these documents and any other related documents in connection

[1] There will not be a November CCCFA board meeting.

therewith. The Finance Department will submit an informational memorandum on the pricing results after the closing of the Bonds.

COST SUMMARY/IMPLICATIONS

The proposed prepayment transaction is expected to save the City about $3-6 million per year during the Initial Term of the Bonds. The savings result in reduced power supply expenses for SJCE, which will be factored into SJCE's annual rate recommendations. The actual savings will depend on the spread between the taxable and tax-exempt rates. Professional services (bond and disclosure counsel fees, municipal advisor fees, rating agency fees, and green bonds designation fees) and other related costs are estimated to be approximately $2,022,529 and will be paid from proceeds (principal and premium) of the Bonds, net of the underwriters' discount of approximately $1,025,074,098. The payment of the fees and expenses of the underwriter, municipal advisors, bond counsel, and disclosure counsel is contingent on the successful closing of the Bonds and payable solely from the proceeds thereof.

COORDINATION

This report was prepared by the Finance Department and the Energy Department in coordination with the City Attorney's Office, the City Manager's Budget Office, and the financing team participants.

City staff, Orrick Herrington & Sutcliffe LLP, the bond counsel for the Bonds, and representatives of PFM and Public Resources Advisory Group, the City's municipal advisors for the Bonds, will be available during the City Council meeting on October 8, 2024, to address any questions, issues, and/or concerns.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the October, 8, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project, which may result in a potentially significant physical impact on the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

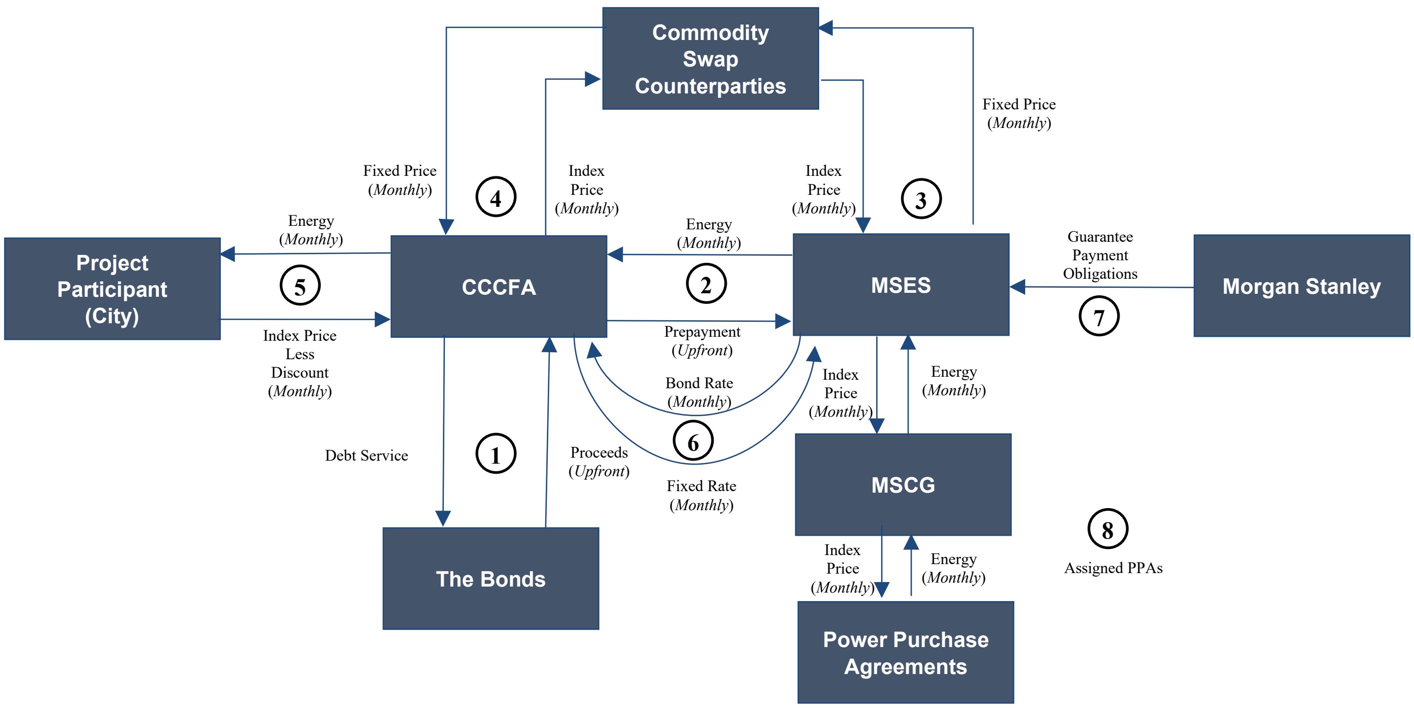
/s/	/s/
DREW CORBETT	ZACHARY STRUYK
Acting Director of Finance	Acting Director of Energy

For questions related to bond finance, please contact Qianyu Sun, Deputy Director of Finance – Debt and Treasury Management at qianyu.sun@sanjoseca.gov or (408) 535-7832. For questions related to SJCE, please contact Zachary Struyk at zachary.struyk@sanjoseca.gov or (408) 535-4868.

ATTACHMENT – Diagram of Clean Energy Project Transaction Structure

Attachment - Diagram of Clean Energy Project Transaction Structure

CLEAN ENERGY PROJECT TRANSACTION STRUCTURE



Transaction Overview

1. **Bond Issuance:** CCCFA issues the Bonds to fund the prepayment for Energy, pay capitalized interest, and pay costs of issuance. The Bonds will bear interest at fixed interest rates (or at floating rates swapped to a fixed rate under the Interest Rate Swap) during the Initial Interest Rate Period.

2. **Prepayment:** CCCFA will apply bond proceeds to prepay MSES for 30 years of Energy deliveries. Under the Prepaid Energy Sales Agreement, MSES will be obligated to: (a) deliver specified quantities of Energy each month to CCCFA for 30 years; (b) make payments for (i) projected monthly quantities of Assigned Energy that are not delivered and (ii) hourly quantities of Base Energy that are remarketed based on the applicable index price; and (c) make a termination payment upon any early termination of the Prepaid Energy Sales Agreement, including upon a Failed Remarketing.

3. **MSES Commodity Swaps:** MSES enters into the MSES Commodity Swaps with the Commodity Swap Counterparties to facilitate MSES's ability to purchase at index prices the specified Energy quantities required to be delivered each month throughout the term of the Prepaid Energy Sales Agreement.

4. **CCCFA Commodity Swaps:** CCCFA enters into the CCCFA Commodity Swaps with the Commodity Swap Counterparties to facilitate its ability to sell specified Energy quantities required to be delivered to the Project Participant at index prices. The CCCFA Commodity Swaps enable CCCFA to sell prepaid quantities to the Project Participant at index prices while ensuring that the net revenues from Project Participant payments and the CCCFA Commodity Swaps always equal or exceed debt service regardless of the index price of Energy at the time. Quantities, term, and delivery points for the CCCFA Commodity Swaps mirror those of the MSES Commodity Swaps.

5. **Project Participant:** Under the Power Supply Contract, CCCFA will sell to the Project Participant all of the Energy delivered by MSES on a pay-as-you-go basis at an index price less specified discounts determined to ensure that the month's net Energy sale revenues (net of swap payments and receipts) will enable CCCFA to make scheduled deposits to the Debt Service Account.

6. **Interest Rate Swap:** CCCFA will enter into the Interest Rate Swap with MSES under which it will pay a fixed rate and receive a floating rate with respect to the interest rate on the Index Rate Bonds.

7. **MS Guarantees:** The payment obligations of MSES under the Prepaid Energy Sales Agreement, the MSES Commodity Swaps and the Interest Rate Swap will be guaranteed by Morgan Stanley.

8. **Assigned PPAs:** The Project Participant is expected to assign its rights to receive EPS Compliant Energy under existing and future PPAs to MSES (or, if MSCG is not the seller under the applicable PPA, to MSCG for delivery of the Assigned Product to MSES) in order for MSES to meet its obligation to deliver EPS Compliant Energy to CCCFA under the Prepaid Energy Sales Agreement.

   The cumulative effect of the Prepaid Energy Sales Agreement, the CCCFA Commodity Swaps, the Power Supply Contract and related documents enables CCCFA to receive dependable Energy supplies at a discount below market prices for sale to the Project Participant. The resulting monthly net revenues, regardless of changes in Energy prices, are expected to be adequate to pay Debt Service requirements on the Bonds and program expenses when due.