

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, IN CONNECTION WITH THE ISSUANCE AND SALE OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,250,000,000 TO FINANCE THE ACQUISITION OF A LONG-TERM SUPPLY OF ELECTRICITY FOR THE CITY OF SAN JOSE 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**

**WHEREAS**, the Council of the City of San José (the “City”) has established and implemented a community choice aggregation program called San José Clean Energy pursuant to California Public Utilities Code Section 366.2 to combine the electric loads of its residents, businesses, and municipal facilities, support the City’s transition to energy that complies with or exceeds California’s Emissions Performance Standards (hereinafter referred to as “clean energy”) and provide its residents and businesses local control over electricity prices, resources, and quality of service and, as such, the City is a community choice aggregator (“CCA”) as defined in California Public Utilities Code Section 331.1 with the power to purchase and sell electric energy and enter into related contracts for such purposes; and

**WHEREAS**, pursuant to the provisions of the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”), a number of California

public agencies (as defined in the Act) that are CCAs and have implemented CCA programs pursuant to the California Public Utilities Code have entered into a joint powers agreement (as amended, the “Agreement”) pursuant to which the California Community Choice Financing Authority (the “Issuer”) has been organized for the purpose, among other things, of entering into contracts and issuing bonds to assist its members in financing or refinancing the acquisition of supplies of energy; and

**WHEREAS**, the City is an Associate Member (as such term is defined in the Agreement) of the Issuer and has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer; and

**WHEREAS**, the City is requesting that the Issuer agree to purchase certain quantities of clean energy from Morgan Stanley Energy Structuring, L.L.C, a Delaware limited liability company (the “Prepaid Supplier”) on a prepaid basis (the “Project”) and sell such quantities of clean energy to the City; and

**WHEREAS**, the City is requesting that the Issuer finance the costs of the Project with proceeds received by the Issuer from the issuance and sale by the Issuer of one or more series or subseries of its Clean Energy Project Revenue Bonds (the “Bonds”); and

**WHEREAS**, the City has determined to authorize the officers of the City to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

**WHEREAS**, in furtherance of the foregoing, forms of the following documents (the “City Documents”) have been prepared and submitted to the City for consideration and approval by the City Council:

- Power Supply Contract between the Issuer and the City providing for the sale and delivery of the prepaid quantities of clean energy to the City; and
- Custodial Agreement by and among the Issuer, the City, Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), the Prepaid Supplier and U.S. Bank Trust Company, National Association or such other custodian named therein, as custodian; and
- Letter Agreement among the Prepaid Supplier, MSCG, the City and the Issuer, together with forms of Limited Assignment Agreements to be entered into by and between the City, the applicable counterparty to the related power purchase agreement to be described therein, and MSCG or the Prepaid Supplier, as applicable, in connection with the Project; and
- Prepaid Energy Project Administration Agreement by and between the Issuer and the City; and

**WHEREAS**, there have also been prepared and submitted to the City and made available to the City Council forms of the following additional documents relating to the Project:

- Trust Indenture (the “Indenture”) between the Issuer and U.S. Bank Trust Company, National Association or other trustee named therein, as trustee, relating to the issuance and security for the Bonds; and
- Prepaid Energy Sales Agreement (the “Prepaid Agreement”) between the Issuer and the Prepaid Supplier providing for the delivery of the prepaid energy supply to the Issuer; and

- Re-Pricing Agreement (the “Re-Pricing Agreement”) between the Issuer and the Prepaid Supplier providing for the re-establishment of the discount available to the City under the Power Supply Contract from time to time after the initial period set out in the Power Supply Contract; and
- Preliminary Official Statement (the “Preliminary Official Statement”) to be used in connection with the offering and sale of the Bonds, including the information relating to the City included in Appendix A thereto (the Indenture, the Prepaid Agreement, the Re-Pricing Agreement and the Preliminary Official Statement, together with the City Documents, the “Project Documents”);

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**Section 1.** The City Council hereby determines that the public interest and necessity demand that the Issuer issue the Bonds for the purposes described in this Resolution.

**Section 2.** The proposed forms of the City Documents, as posted to the agenda webpage for this meeting, and their terms and conditions, are hereby approved. The forms of the Limited Assignment Agreements attached to the Letter Agreement may be used, in substantially the same form, for the initial assignments of City power purchase agreements, and in a similar form for additional assignments of City power purchase agreements as needed to maintain the transactions approved hereby, with such changes as may be necessary, with the advice of the City Attorney, to effect such assignment, and any such Limited Assignment Agreements shall be included in the City Documents hereby approved. Subject to the parameters set forth in Section 5 of this Resolution, the City Manager, the Director of Finance, the Director of Energy, the Assistant Director of Finance, the Deputy Director of Finance responsible for managing

the City's debt program, including any person acting in said positions, and their authorized designees (each, an "Authorized Officer"), each acting alone, are hereby authorized and directed, for and on behalf of the City, to execute and deliver the City Documents, in substantially said forms with such changes and insertions therein as the Authorized Officer executing the same approves, with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** The proposed form of Appendix A to the Preliminary Official Statement, as posted to the agenda webpage for this meeting, is hereby approved. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver to the underwriter of the Bonds, for and on behalf of the City, a certificate deeming Appendix A, in substantially said form and with such changes as the Authorized Officer executing such certificate approves after consultation with the City Attorney, to be final within the meaning of Securities Exchange Commission Rule 15c2-12. The Authorized Officers, each acting alone, are hereby authorized and directed to deliver the final form of Appendix A for and on behalf of the City, in substantially the form thereof that is included in the Preliminary Official Statement with such changes as an Authorized Officer requires or approves after consultation with the City Attorney, such approval to be conclusively evidenced by the delivery of Appendix A to the Issuer for inclusion in the final Official Statement.

**Section 4.** The Authorized Officers and each other appropriate officer of the City, each acting alone, are authorized and directed (a) to execute and deliver on the City's behalf any and all agreements, certificates, documents, and instruments, including, without limitation, signature certificates, no-litigation certificates, disclosure certificates, tax certificates, rating agency fee memoranda of understanding, and other closing documents; and (b) to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions approved in this Resolution, in connection with the issuance, sale and delivery of the Bonds, and to

consummate by the City the transactions contemplated by the City Documents approved hereby and the other Project Documents made available to the Council, including any subsequent amendments, waivers, consents, directions, approvals, requests, notices or similar actions entered into or given under or in accordance with such documents. Any Authorized Officer may appoint in writing a designee to perform any of the actions that such Authorized Officer may take under this Resolution.

**Section 5.** The approvals provided for herein shall be subject to the following parameters:

- the Bonds will not be obligations of the City but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by the City under the Power Supply Contract; and
- the aggregate principal amount of the Bonds shall not exceed \$1,250,000,000; and
- the issuance of the Bonds and the execution and delivery of the Power Supply Contract and related documents shall result in an annual discount to the City for the initial reset period under the Power Supply Contract of at least 8.0% of the annual undiscounted cost of the prepaid quantities of energy scheduled to be delivered under the Power Supply Contract for the initial reset period.

**Section 6.** Execution and delivery of the City Documents by an Authorized Officer or Authorized Officers shall be conclusive evidence that the parameters set forth in Section 5 have been met.

**Section 7.** If the conditions set forth in Section 5 have been met, any Authorized Officer may direct the payment to professionals that provided services to the City in connection with the Project. These professional services include legal counsel, bond counsel, tax counsel, disclosure counsel, municipal or financial advisor, swap advisor, and any other consultant needed to complete the transactions contemplated herein. Payment to these professionals will be made from the proceeds of the Bonds and pursuant to the terms of the applicable agreement executed by the City.

**Section 8.** If the conditions set forth in Section 5 have been met, any Authorized Officer may direct the payment to additional vendors and/or parties to the City Documents or other Project Documents to complete the issuance of the Bonds. These vendors, if any, will be paid pursuant to an agreement for services rendered in completing the issuance of the Bonds and from the proceeds of the Bonds.

**Section 9.** All actions heretofore taken by the Authorized Officers, and any and all other officers and agents of the City, in connection with the issuance of the Bonds and the other actions contemplated by this Resolution are hereby ratified, confirmed and approved.

**Section 10.** This Resolution shall take effect from and after its adoption.

///

///

///

///

ADOPTED this 8th day of October, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

MATT MAHAN  
Mayor

ATTEST:

---

TONI J. TABER, MMC  
City Clerk