

RESOLUTION 2023-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS; AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, The Silicon Valley Clean Energy Authority (“SVCE”) was formed as a community choice aggregation agency (“CCA”) on March 31, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.* (the “Act”), among the City of Campbell, City of Cupertino, City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga and City of Sunnyvale, to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The city of Milpitas, located in Santa Clara County, was added as a member of SVCE and a party to the Joint Powers Agreement (as defined below) in June 2018;

WHEREAS, California Community Choice Financing Authority (the “Issuer”) is a joint powers authority established and organized under the Act, with the power and authority to enter into contracts and issue bonds to assist CCAs in financing the acquisition of supplies of clean energy;

WHEREAS, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy by any means and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

WHEREAS, SVCE has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer;

WHEREAS, SVCE 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 to sell such clean energy to SVCE, as described herein;

WHEREAS, SVCE is requesting that the Issuer finance the costs of the Project with the proceeds of its Clean Energy Project Revenue Bonds, with such series designation(s) as is determined by CCCFA (the “Bonds”);

WHEREAS, SVCE has determined to authorize the officers of SVCE 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, there have been made available to the Board of Directors of SVCE for approval forms of the following agreements to which SVCE is a party (collectively, the “SVCE Documents”):

1. Power Supply Contract between SVCE and the Issuer;
2. Custodial Agreement by and among SVCE, CCCFA Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”), the Prepaid Supplier, and the custodian to be named therein;
3. Form of Limited Assignment Agreement, by and among SVCE, the counterparty to the power purchase agreement described therein, and MSCG;
4. Letter Agreement among SVCE, the Prepaid Supplier and MSCG regarding matters relating to Assignment Agreements; and
5. Prepaid Energy Project Administration Agreement, by and between SVCE and the Issuer; and

WHEREAS, there have also been made available to the Board of Directors of SVCE forms of the following additional documents relating to the Project:

1. Trust Indenture (the “Indenture”) between the Issuer and the trustee to be named therein, providing for, among other things, the issuance of and security for the Bonds;
2. 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;
3. Re-pricing Agreement (the “Re-pricing Agreement”) between the Issuer and the Prepaid Supplier providing for the remarketing or refunding of the Bonds from time to time and the establishment of the Monthly Discount available to SVCE under the Power Supply Agreement from time to time during the term of the transaction; and
4. 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 SVCE included in Appendix A thereto (the Indenture, the Prepaid Agreement, the Re-pricing Agreement and the Preliminary Official Statement, together with the SVCE Documents, the “Project Documents”);

NOW THEREFORE, BE IT RESOLVED by the SVCE Board of Directors, as follows:

Section 1. The proposed forms of the SVCE Documents, as made available to the Board of Directors for this meeting, are hereby approved. The form of

Limited Assignment Agreement may be used, in substantially the same form, for the initial assignments of SVCE power purchase agreements, and in a similar form for additional power purchase agreements as needed to maintain the transactions approved hereby, with such changes as may be necessary to conform to the requirements of such power purchase agreement or as may be necessary to effect such assignment, and any such Limited Assignment Agreements shall be included in the SVCE Documents hereby approved. Subject to the parameters set forth in Section 4 of this Resolution, any of the Chief Executive Officer, Chief Operations Officer, Chair of the Board, the Director of Finance (each an “Authorized Officer”) is hereby authorized and directed, for and on behalf of SVCE, to execute and deliver the SVCE Documents in substantially said form, with such changes and insertions therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The proposed form of the Preliminary Official Statement, as made available to the Board of Directors for this meeting, is hereby approved. Any Authorized Officer is hereby authorized and directed, for and on behalf of SVCE, to execute and deliver a certificate as to the information regarding SVCE contained therein and in the final version of the Official Statement, with such changes and insertions therein as the Authorized Officer approving the same may deem necessary or appropriate. Subject to approval by the Issuer, SVCE hereby authorizes the distribution of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds, and the delivery of the Official Statement in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

Section 3. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of SVCE, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in the discretion of such Authorized Officers, to effectuate the actions which SVCE has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by SVCE the transactions contemplated by the SVCE Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 4. The amount of the prepayment to be made under the Prepaid Agreement shall be established using the monthly quantities of energy to be delivered over an approximately 30-year term and a fixed price determined as of the time of pricing using available market prices and other information and reviewed and approved by SVCE’s financial advisor (the “Fixed Price”), discounted to present value at an agreed discount rate determined at the time of pricing. The prepaid energy will be delivered by the Issuer to SVCE under the Power Supply Contract at a floating day-ahead index price less a monthly discount stated in dollars per MWh (the “Monthly Discount”).

Considering the foregoing, the approvals provided for herein shall be subject to the following parameters:

(a) the Bonds will not be obligations of SVCE, 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 SVCE under the Power Supply Contract;

(b) the aggregate principal amount of the Bonds shall not exceed \$1,500,000,000;

(c) for the initial Reset Period (as defined in the Power Supply Contract), the annual cost savings relative to the Fixed Price with respect to the energy to be delivered to SVCE under the Power Supply Contract for each annual period during the initial Reset Period, taking into account the Monthly Discount and the Annual Refund (as defined in the Power Supply Contract) for each such annual period, shall be at least eight percent (8%);

(d) The energy service revenue fee in the transaction shall not exceed \$1.10 per MWh;

(e) The commodity swap counterparty fee in the transaction shall not exceed \$0.50 per MWh; and

(f) If any floating rate bonds are issued, Morgan Stanley shall charge no more than six basis points on the interest rate swap spread to mid-market.

Section 5. Execution and delivery of the SVCE Documents by an Authorized Officer or Officers shall be conclusive evidence that the parameters set forth in Section 4 have been met, and all actions heretofore taken by the Authorized Officers with respect to the issuance of the Bonds are hereby ratified, confirmed and approved.

Section 6. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to professionals that provided services to SVCE in connection with the Project. These professional services include legal counsel, bond counsel, tax counsel, Municipal Financial Advisor, Swap Advisor, and any other consultant needed to complete the transactions contemplated herein for SVCE. Payment to these professionals will be made from the proceeds of the sale of the Bonds and pursuant to the terms of the applicable agreement executed with SVCE.

Section 7. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to additional vendors and/or parties to the SVCE 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 sale of the Bonds.

Section 8. This Resolution shall take effect immediately.

ADOPTED AND APPROVED at a regular meeting of the SVCE Board of Directors on this 11th day of October, 2023.

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola	✓			
City of Cupertino	Director Mohan	✓			
City of Gilroy	Alt. Director Armendariz				✓
City of Los Altos	Director Meadows	✓			
Town of Los Altos Hills	Director Tyson	✓			
Town of Los Gatos	Director Rennie	✓			
City of Milpitas	Director Chua				✓
City of Monte Sereno	Alt. Director Craig	✓			
City of Morgan Hill	Director Martinez Beltran				✓
City of Mountain View	Alt. Director Showalter	✓			
County of Santa Clara	Director Lee	✓			
City of Saratoga	Director Walia	✓			
City of Sunnyvale	Director Klein	✓			

DocuSigned by:

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Chair

Attest:

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Andrea Pizano, Board Clerk