

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER, THE DIRECTOR OF FINANCE, OR THEIR AUTHORIZED DESIGNEES TO NEGOTIATE, EXECUTE, AND DELIVER THE SECOND AMENDMENT TO THE REVOLVING CREDIT AGREEMENT WITH BARCLAYS BANK PLC RELATING TO THE CITY OF SAN JOSE'S COMMUNITY ENERGY PROGRAM, AND TO TAKE OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, Section 331.1 of the California Public Utilities Code allows cities and counties to establish a community-wide electricity program known as Community Choice Aggregation, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdiction while existing investor-owned utilities continue to provide such service to existing customers, such as billing, transmission and distribution; and

WHEREAS, the City of San José (the "City") has heretofore established a Community Choice Aggregation program for the provision of electrical power within the City's boundaries with the name "San José Clean Energy" (the "Clean Energy Program"), under Title 26, Community Energy, of the City's Municipal Code; and

WHEREAS, the Clean Energy Program has certain working capital needs as part of conducting its normal business activities; and

WHEREAS, as part of the operations of the Clean Energy Program, the City has entered into certain power purchase agreements with power providers (the "Power Purchase Agreements"), under which the City is required to make payments to such providers in exchange for electrical power for the Clean Energy Program; and

WHEREAS, the City anticipates entering into additional Power Purchase Agreements in the future under which the City will be required to make payments to such providers in exchange for electrical power for the Clean Energy Program and, in some instances, may also be required to secure the City's performance of its obligations thereunder; and

WHEREAS, pursuant to Chapter 4.40 of Title 4 of the City's Municipal Code, the City is empowered to secure credit facilities to support the operations of the Clean Energy Program; and

WHEREAS, the City and Barclays Bank PLC (the "Bank") are party to a Revolving Credit Agreement, dated as of November 1, 2018, as amended by a First Amendment to Revolving Credit Agreement dated May 10, 2019 (as so amended, the "Revolving Credit Agreement") to support the operations of the Clean Energy Program, including, without limitation, to finance the start-up costs of the Community Energy Program, purchase power, and secure payments under Power Purchase Agreements, and to pay for other costs associated and consistent with the Community Energy Implementation Plan; and

WHEREAS, pursuant to the Revolving Credit Agreement, the Bank has committed to make revolving loans to the City (the "Revolving Loan Facility") in an aggregate principal amount not to exceed \$30,000,000 and standby letters of credit for the account of the City (the "Standby Letter of Credit Facility") in an aggregate principal amount not to exceed \$65,000,000, provided, however, that the aggregate principal amount outstanding under the Revolving Loan Facility and the Standby Letter of Credit Facility may not exceed \$80,000,000 at any one time; and

WHEREAS, the City's obligations under the Revolving Credit Agreement are secured solely by a pledge and lien on revenues of the Clean Energy Program, including revenues deposited in an operating reserve account held by the City pursuant to the Revolving Credit Agreement; and

WHEREAS, the City and the former Redevelopment Agency of the City of San José (the “Former Agency”) have heretofore entered into a Joint Exercise of Powers Agreement establishing the City of San José Financing Authority (the “Authority”) for the purpose, among others, of having the Authority issue its instruments of debt to finance the acquisition, construction and improvement of certain public capital improvements; and

WHEREAS, the Authority has heretofore determined to adopt and implement a commercial paper program under which the Authority will provide financing for certain public capital improvements for the City and, to that end, may from time to time issue its City of San José Financing Authority Tax-Exempt Commercial Paper Notes and City of San José Financing Authority Taxable Lease Revenue Commercial Paper Notes (collectively, the “Commercial Paper Notes”); and

WHEREAS, the City has requested that the Authority issue Commercial Paper Notes to finance the costs of purchasing power and other operating costs of the Clean Energy Program in the amount not to exceed \$95,000,000; and

WHEREAS, the City and the Bank now desire to amend the Revolving Credit Agreement pursuant to a Second Amendment to Revolving Credit Agreement (the “Second Amendment to Revolving Credit Agreement”) to, among other items, accommodate the issuance by the Authority of Commercial Paper Notes to finance the costs of purchasing power and other operating costs of the Clean Energy Program; and

WHEREAS, the City has duly considered such transactions and wishes at this time to approve certain matters relating to said transactions in the public interests of the City;

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

SECTION 1. The City Council hereby approves the City's negotiation, execution and delivery of the Second Amendment to Revolving Credit Agreement in the form posted to the agenda webpage for this meeting of the City together with such additions thereto and changes therein as the City Manager, the Director of Finance, or their authorized designees (collectively, the "Designated Officers"), each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney and members of the City's Community Energy Department. The City Council hereby authorizes the performance by the City of its obligations under the Revolving Credit Agreement, as amended by the Second Amendment to Revolving Credit Agreement. The Designated Officers, each acting alone, are further authorized to execute and deliver one or more extensions or other amendments to the Revolving Credit Agreement, as amended by the Second Amendment to Revolving Credit Agreement, or the credit facilities available under the Revolving Credit Agreement for any duration of time that they deem necessary, advisable or prudent, provided that no such extensions or other amendments shall cause, without the approval of this City Council: (i) the annual fees payable by the City to the Bank for the commitment to make revolving loans to the City to exceed 1.00% per annum; (ii) the annual fees payable by the City to the Bank for the commitment to issue standby letters of credit for the account of the City to exceed 1.00% per annum; (iii) the letter of credit fees payable by the City to the Bank on the daily amount available to be drawn under any issued standby letters of credit to exceed 1.95% per annum; and (iv) the spread above the benchmark rate of interest charged by the Bank on the principal amount of unreimbursed revolving loans to the City and unreimbursed draws under any issued standby letters of credit to exceed 2.90% per annum.

SECTION 2. The Designated Officers are each hereby authorized, acting alone, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all documents, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance,

warrants and documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful execution and delivery of the Second Amendment to Revolving Credit Agreement and the consummation of the transactions as described herein, including without limitation, such documents, assignments, certificates and agreements as may be required by the Second Amendment to Revolving Credit Agreement.

Any authority delegated under this Resolution to a specified official (including officials acting in these positions on an interim basis) may also be exercised by the specified official's authorized designee.

ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk