

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER, THE DIRECTOR OF FINANCE, THE ASSISTANT DIRECTOR OF FINANCE OR THEIR AUTHORIZED DESIGNEES TO NEGOTIATE, EXECUTE, AND DELIVER THE FIRST AMENDMENT TO THE REVOLVING CREDIT AGREEMENT WITH BARCLAYS BANK PLC TO INCREASE THE SUBLIMIT FOR THE LINE OF CREDIT FACILITY THEREUNDER FROM AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$20,000,000 TO \$30,000,000, INCREASE THE SUBLIMIT FOR THE STANDBY LETTER OF CREDIT FACILITY THEREUNDER FROM AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$35,000,000 TO \$65,000,000, INCREASE THE AGGREGATE COMMITMENT TO ISSUE REVOLVING LOANS AND STANDBY LETTERS OF CREDIT FROM AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 TO \$80,000,000 OUTSTANDING AT ANY ONE TIME, AND INCREASE CERTAIN FEES PAYABLE BY THE CITY TO BARCLAYS BANK PLC IN CONNECTION WITH THE CREDIT FACILITIES UNDER THE REVOLVING CREDIT AGREEMENT TO FINANCE START-UP COSTS OF THE CITY OF SAN JOSE'S COMMUNITY ENERGY PROGRAM, PURCHASE POWER, AND SECURE PAYMENTS UNDER POWER PURCHASE AGREEMENTS, AND OTHER COSTS ASSOCIATED AND CONSISTENT WITH THE COMMUNITY ENERGY IMPLEMENTATION PLAN, 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, effective on November 27, 2018, the City entered into a Revolving Credit Agreement, dated as of November 1, 2018 (the "Revolving Credit Agreement"), between the City and Barclays Bank PLC (the "Bank"), providing for a credit facility in the form of a commitment by the Bank to issue revolving loans to the City (the "Revolving Loan Facility") in an aggregate principal amount not to exceed \$20,000,000 (the "Revolving Loan Facility Sublimit") 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 \$35,000,000 (the "Standby Letter of Credit Facility Sublimit"), provided, however, that the aggregate principal amount outstanding under the Revolving Loan Facility and the Standby Letter of Credit Facility shall not to exceed \$50,000,000 at any one time (the "Aggregate Commitment"); 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 proposes to use the proceeds of such revolving loans and standby letters of credit 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, the City and the Bank now desire to amend the Revolving Credit Agreement pursuant to a First Amendment to Revolving Credit Agreement (the "First Amendment to Revolving Credit Agreement") to, among other items: (i) increase the Revolving Loan

Facility Sublimit from an aggregate principal amount not to exceed \$20,000,000 to \$30,000,000; (ii) increase the Standby Letter of Credit Facility Sublimit from an aggregate principal amount not to exceed \$35,000,000 to \$65,000,000; (iii) increase the Aggregate Commitment from an aggregate principal amount not to exceed \$50,000,000 to \$80,000,000 outstanding at any one time; and (iv) increase certain fees payable by the City to the Bank under the Revolving Credit Agreement in connection with the credit facilities thereunder; 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 proposed credit facility under the Revolving Credit Agreement, as amended by the First Amendment to Revolving Credit Agreement, consisting of (i) the Revolving Loan Facility with a Revolving Loan Facility Sublimit in the aggregate principal amount not to exceed \$30,000,000 for a period commencing on the effective date of the First Amendment and ending no later than November 27, 2021, (ii) the Standby Letter of Credit Facility with Standby Letter of Credit Facility Sublimit in the aggregate principal amount not to exceed \$65,000,000 for a period commencing on the effective date of the First Amendment and ending no later than October 27, 2023, and (iii) an Aggregate Commitment of not to exceed \$80,000,000 outstanding at any one time. Draws under the Revolving Loan Facility and standby letters of credit issued by the Bank for the account of the City under the Standby Letter of Credit Facility shall be used by the City, as applicable, for the purpose of supporting 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 San José Clean Energy Implementation Plan and Statement of Intent, as it may be amended from time to time.

SECTION 2. The City Council hereby approves the City's negotiation, execution and delivery of the First Amendment to Revolving Credit Agreement and a promissory note in favor of the Bank evidencing the City's obligations under the Revolving Credit Agreement, as amended by the First Amendment to Revolving Credit Agreement (the "Note"), in the forms 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, the Assistant 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 First Amendment to Revolving Credit Agreement, and the Note. 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 First 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 0.715% 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 1.15% 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 1.925% 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 2.30% per annum.

SECTION 3. 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 First Amendment to Revolving Credit Agreement and the Note and the consummation of the transactions as described herein, including without limitation, such documents, assignments, certificates and agreements as may be required by the First 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 _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk