

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (1) AUTHORIZING THE DIRECTOR OF THE COMMUNITY ENERGY DEPARTMENT TO EXECUTE A PROJECT PARTICIPATION SHARE AGREEMENT AND BUYER LIABILITY PASS THROUGH AGREEMENT AND TO NEGOTIATE AND EXECUTE A COORDINATED OPERATING AGREEMENT FOR THE PROCUREMENT OF LONG-DURATION STORAGE; AND (2) INCREASING THE DIRECTOR OF THE COMMUNITY ENERGY DEPARTMENT'S AUTHORITY TO NEGOTIATE AND EXECUTE CONTRACTS FIVE YEARS AND UNDER FOR THE PROCUREMENT OF POWER SUPPLY PRODUCTS

WHEREAS, the City of San José's ("City") Community Energy Department ("CED") administers the City's Community Choice Aggregation ("CCA") program, which is named San José Clean Energy ("SJCE"); and

WHEREAS, Section 26.50.020 of the San José Municipal Code ("SJMC") states that the City may enter into contracts to procure power products for a term of up to twenty-five years, and Section 26.50.050 of the SJMC requires the Director of the Community Energy Department to submit an Energy Risk Management Policy to City Council; and

WHEREAS, the Energy Risk Management Policy, approved by the City Council on May 1, 2018, established the City Manager's Risk Oversight Committee ("ROC") responsible for overseeing the CED's risk management; and

WHEREAS, the Energy Risk Management Policy and associated Energy Risk Management Regulations set forth a risk control structure and procurement requirements that apply to SJCE procurement activities and establish requirements for the competitive procurement of power products; and

WHEREAS, on August 25, 2020, the City Council approved an Integrated Resource Plan (“IRP”) for SJCE that indicated that SJCE should add 100 megawatts (“MW”) of wind, 320 MW of solar, and 200 MW of battery storage by 2030 and included an evaluation and discussion of long-duration storage (projects that can store energy for a period of eight hours or longer), as required by the California Public Utilities Commission (“CPUC”); and

WHEREAS, on June 6, 2021, the CPUC issued Decision 21-06-035 which required SJCE to procure a minimum of 21.5 MW of long-duration storage, in addition to 226.5 MW of other technologies; and

WHEREAS, on January 5, 2021, City Council authorized the City Manager or the City Manager’s designee to join California Community Power (“CC Power”), a newly formed Joint Powers Authority comprised of ten CCAs in northern and central California including SJCE, and required SJCE to obtain City Council approval to participate in any CC Power project agreement; and

WHEREAS, CC Power released a solicitation on October 15, 2020 seeking long-duration storage with an online date no later than June 2026, and the LS Power Tumbleweed was among the highest ranked long-duration storage projects submitted in response to the solicitation; and

WHEREAS, the LS Power Tumbleweed project is 69 MW of lithium-ion battery energy storage located in Kern County with 8-hour discharge, qualifying it as long-duration storage, and a commercial online date of June 2026; and

WHEREAS, the participants of CC Power’s long-duration storage procurement effort developed a comprehensive contracting structure that includes four separate agreements, each among different entities and working in tandem: (1) the Energy

Service Storage Agreement (“ESSA”), between CC Power and LS Power, the developer, (2) the Buyer Liability Pass Through Agreement (“BLPTA”), between LS Power, CC Power, and each participating CCA, (3) the Project Participation Share Agreement (“PPSA”), between CC Power and each participating CCA, and (4) the Coordinated Operating Agreement (“COA”), between CC Power and each participating CCA; and

WHEREAS, under the four-agreement contracting structure, CC Power is the buyer of the storage services; the seller has direct recourse through CC Power to each participating CCA for its share of the contract payments but limited to only that CCA’s share; each participating CCA receives from CC Power its related share of the contract benefits (the storage services); CC Power, which has no assets, is required to maintain an appropriate suite of insurances; and each CCA commits to assuming no more than twenty five percent (25%) than its initial share of the contracted costs and benefits, if one or more of the other participating CCAs default; and

WHEREAS, contracting for the output of LS Power Tumbleweed project will allow SJCE to meet an important portion of its long-duration storage CPUC requirement and its needs for resource adequacy (another regulatory obligation), giving SJCE the ability to shift solar power to more valuable evening hours; and

WHEREAS, on June 15, 2021, the City Council authorized the Director of the Community Energy Department or the Director’s designee to procure power supply products other than resource adequacy, including but not limited to renewable projects and shaped or dispatchable power products, in an amount not to exceed \$2,671,700,000 in aggregate in Calendar Year (“CY”) 2021 through 2043, and resource adequacy, including but not limited to storage projects combined with dispatchable power, in an amount not to exceed \$798,000,000 in aggregate in CY 2021 through 2043; and

WHEREAS, energy prices in 2021 were significantly higher than they have been historically, rising by 28 percent from June 2021 to January 2022, and when prices are high it is prudent to purchase more energy in the forward market to ensure customers are not exposed to short-term market disruptions; and, in addition, there is a moderate delivery risks related to long-term renewable power contracts that have recently commenced operation and hence do not have well established delivery patterns due to weather variations; and

WHEREAS, staff recommends that the City execute the Project Participation Share Agreement and the Buyer Liability Pass Through Agreement and to negotiate and execute the Coordinated Operating Agreement, as described in staff's Council memorandum dated February 22, 2022, to allow SJCE to make significant progress towards complying with the long-duration storage requirement issued by the CPUC in Decision 21-06-035, and to increase the authority granted to the Director of the Community Energy Department or the Director's designee to negotiate and execute contracts of five or less years for the procurement of power supply products because of higher energy prices, recommended higher coverage ratios, and moderate delivery risk related to long-term renewable contracts;

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

- (a) The Director of the Community Energy Department is hereby authorized to execute the following two agreements for the procurement of up to 25 megawatts from LS Power's Tumbleweed long-duration storage battery project, with any non-material modifications developed, as appropriate, in consultation with the City Attorney, and subject to the annual appropriation of funds, in an amount not to exceed five million and nine hundred thousand dollars (\$5.9M) annually and

eighty nine million dollars (\$89M) in aggregate in Calendar Years 2022 through 2041 for both agreements:

- (1) Project Participation Share Agreement between California Community Power, the City of San José, Peninsula Clean Energy, Sonoma Clean Power, CleanPower San Francisco, Redwood Coast Energy Authority, Silicon Valley Clean Energy, and Valley Clean Energy;
 - (2) Buyer Liability Pass Through Agreement between California Community Power, LS Power, and the City of San José.
- (b) The Director of the Community Energy Department is hereby authorized to negotiate and execute, in consultation with the City Attorney, a Coordinated Operating Agreement between California Community Power, the City of San José, Peninsula Clean Energy, Sonoma Clean Power, CleanPower San Francisco, Redwood Coast Energy Authority, Silicon Valley Clean Energy, and Valley Clean Energy addressing operation by the California Community Power of the LS Power's Tumbleweed long-duration storage battery project; and
- (c) Increased authority is hereby granted to the Director of the Community Energy Department or the Director's designee to negotiate and execute contracts five years and under, subject to the Energy Risk Management Policy and the appropriation of funds, for the procurement of power supply products by \$291,000,000 from \$928,600,000, to an amount not to exceed \$1,219,600,000 in aggregate in Calendar Years 2022 through 2025, subject to the following annual not to exceed amounts: 2022: \$360,200,000; 2023: \$320,100,000; 2024: \$291,500,000; and 2025: \$247,800,000.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk