CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Julia H. Cooper
Lori Mitchell
Jim Shannon

SUBJECT: SEE BELOW

DATE: December 8, 2022

Approved Jennifer A. Maguire

Date **12/9/2022**

SUBJECT: SAN JOSE CLEAN ENERGY REVOLVING CREDIT AGREEMENT

RECOMMENDATION

a) Adopt a resolution authorizing the City Manager, the Director of Finance, the Assistant Director of Finance, and their authorized designees to negotiate, execute, and deliver a revolving credit agreement, promissory note, and fee agreement related thereto with JPMorgan Chase Bank, N.A., providing for a commitment to issue revolving loans and standby letters of credit in an aggregate principal amount not to exceed $250,000,000 outstanding at any one time to support the operations of San José Clean Energy including, without limitation, to provide collateral to meet regulatory obligations; to terminate and pay off the existing revolving credit agreement, and execute and deliver related documents with Barclays Bank PLC; and to take other related actions in connection therewith.

b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the San José Clean Energy Fund:
   1) Increase the Letter of Credit Fees appropriation to the Finance Department by $2,500,000; and
   2) Decrease the Unrestricted Ending Fund Balance by $2,500,000.

OUTCOME

Approval of this resolution will authorize the City Manager, the Director of Finance, the Assistant Director of Finance, and their authorized designees to negotiate, execute, and deliver a revolving credit agreement (the Credit Agreement), promissory note (the Note) and Fee Agreement (the Fee Agreement) with JPMorgan Chase Bank, N.A. (JPMorgan) and a termination letter from the City to Barclays Bank PLC (Barclays) (the Barclays Payoff and

Termination Letter). Under the Credit Agreement, JPMorgan proposes to provide the City with a credit facility consisting of a revolving line of credit and one or more standby letter of credit facilities in an aggregate principal amount not to exceed $250,000,000 outstanding at any time. Under the Barclays Payoff and Termination Letter, the City will pay all amounts due by the City under, and terminate, the revolving credit agreement with Barclays.

Approval of the recommendation would allow the City to establish a credit facility with JPMorgan, permit the City to continue to enter into power contracts, and provide collateral for power purchase agreements and for regulatory obligations of San José Clean Energy (SJCE). The credit facility will also provide additional liquidity, conserve cash flow to build reserves, and reduce power supply costs by providing collateral required to enter into certain power purchase agreements.

BACKGROUND

The City entered into a Revolving Credit Agreement (the Barclays Agreement) with Barclays on November 27, 2018, to support SJCE's operational needs, with a revolving line of credit of $20,000,000 and a standby letter of credit (LOC) facility of $35,000,000. The Barclays Agreement has since been amended to consist of only the standby LOC facility of up to $65,000,000. To date, SJCE has utilized approximately $10 million of the Barclays Agreement.

To support SJCE's working capital needs, on June 22, 2021, the City Council and the City of San José Financing Authority (the Authority) adopted resolutions[1] authorizing the issuance of the Authority's Lease Revenue Commercial Paper Notes (CP) to finance the purchase of power and other operating costs of SJCE, in an amount not to exceed $95,000,000. To date, the Authority has issued $60,000,000 in CP. SJCE plans to repay the CP in full by the end of Fiscal Year (FY) 2023-24 when SJCE's operating reserve account is anticipated to be above $180,000,000.

During FY 2021-22, SJCE determined additional credit capacity was necessary to meet working capital and operational needs of SJCE, such as providing collateral to secure the City's obligations for the purchase of power products and regulatory obligations pursuant to the requirements of the California Public Utilities Commission (CPUC). As authorized by the City Council, SJCE intends to enter into more medium-term power purchase agreements that may require SJCE to post collateral to secure the City's obligations to counterparties under such agreements. Furthermore, the credit facility is intended to mitigate risk factors resulting from the volatility in power supply markets due to weather, political conditions, war or other systemic events. Stress tests show the need to post collateral on existing and new power agreements if the currently high power prices moderate back to historical averages.

[1] https://records.sanjoseca.gov/Resolutions/RES80125.pdf

In addition, all Community Choice Aggregators currently are required to post a Financial Security Requirement (FSR) with their respective investor-owned utility (IOU) that operates within their service territory (CPUC Decision 18-05-022)[2]. The FSR is intended to cover administrative and net procurement costs incurred by the IOU in the event a Community Choice Aggregator failed to provide or denied service to retail customers, and these customers were returned to the IOU, the default Provider of Last Resort. On March 18, 2021, the CPUC opened a proceeding to establish the Provider of Last Resort framework requirements, which includes an assessment of the sufficiency of the current FSR (R. 21-03-011)[3]. This proceeding is expected to modify the calculation of the FSR, and SJCE may need to post a substantially higher collateral amount to PG&E, its IOU. A CPUC decision updating the FSR calculation is expected in early 2023.

ANALYSIS

Request For Proposals (RFP) Process

On October 7, 2022, the Finance Department issued an RFP (the 2022 RFP) to qualified lenders and/or financial institutions, seeking proposals to provide a credit facility supported solely by SJCE revenues to meet collateral requirements, replace existing standby letters of credit securing collateral requirements, provide working capital, and support medium and long-term operations. The City notified 24 financial institutions of the 2022 RFP release and received one proposal, which is from JPMorgan.

Proposal Summary

JPMorgan proposes a revolving credit facility (the Credit Facility) up to $250,000,000 for a period up to five years, allocating to three sub-facilities:

a) $50,000,000 line of credit for general corporate purposes (Line of Credit), which can be reallocated towards either (b) or (c) below
b) $100,000,000 for LOCs up to a term of 2 years
c) $100,000,000 for LOCs up to a term of 5 years

Obligations under the Credit Facility are limited obligations of SJCE and present non-recourse to the City. The Credit Facility will be secured by net revenues of SJCE.

For the unused portion of the Credit Facility, SJCE will be obligated to pay undrawn fees of (i) 0.60%, if the total utilization of the Credit Facility is less than 25%, or (ii) 0.57%, if the total utilization of the Credit Facility is greater than or equal to 25%. Issued standby LOCs are subject to a 1% fee and counts towards total utilization of the Credit Facility. The interest rate on loans can be elected to be either the Adjusted Term secured overnight financing rate (SOFR) Rate or the Alternate Base Rate (ABR) (See Appendix for detailed definitions). The applicable margins

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[2] https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K726/215726275.PDF
[3] https://apps.cpuc.ca.gov/apex/f?p=401:56:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:R2103011

to the Adjusted Term SOFR Rate and ABR vary according to the term of the Credit Facility and total utilization of the Credit Facility.
For reporting, JPMorgan requires:

1) Annual audited financial statements
2) Quarterly unaudited financial statements, outstanding debt and number of customers enrolled
3) Certificate of no default(s) and compliance with the Debt Service Coverage Ratio
4) Financial projections of SJCE's operation for the next three fiscal years

Staff estimates fees associated with the Proposal of up to $2,500,000 per annum.

A summary of key business terms in the proposed Credit Agreement is outlined in the attached Appendix.

Barclays Revolving Credit Agreement

A revolving credit agreement is an agreement that allows a borrower to borrow money repeatedly up to a set limit while fulfilling obligations as required in the agreement. SJCE's current revolving credit agreement, the Barclays Agreement, is scheduled to terminate on November 27, 2023. The City has the option to terminate or permanently reduce the commitments by noticing Barclays five business days in advance. Per the Barclays Agreement, the City is not subject to a termination fee.

The City intends to terminate the Barclays Agreement and pay all amounts due thereunder pursuant to the Barclays Payoff and Termination Letter contemporaneously with the execution and delivery of the Credit Agreement. The City Manager, the Director of Finance, the Assistant Director of Finance, and their authorized designees, each acting alone, may elect to maintain any outstanding the letter of credit issued by Barclays and to cash collateralize the City's reimbursement obligations thereunder.

Security; Source of Repayment

Under the terms of the Credit Agreement, the City's obligations under the Agreement will be secured solely from SJCE's net revenues and not the City's General Fund or any revenues or moneys of the City deposited or to be deposited therein. Net revenues generally consist of revenues received and accrued by SJCE, less all operation and maintenance expenses incurred during the same period. Any amounts due under the Credit Agreement, including advances, interests, commitment fees, etc. will be payable from, and secured solely by, SJCE's net revenues.

Financing Team

The financing team participants consist of:

- City's Municipal Advisor: PFM Financial Advisors LLC
- City's Special Counsel: Jones Hall, A Professional Law Corporation

- Revolving Credit Facility Bank: JPMorgan Chase Bank, N.A.
- Bank Counsel: Chapman and Cutler LLP

CONCLUSION

Approval of the recommendation will allow the designated officers and their designees to negotiate, execute, and deliver a revolving credit agreement, promissory note, and fee agreement related thereto with JPMorgan Chase Bank, N.A., providing for a commitment to issue revolving loans and standby letters of credit in an aggregate principal amount not to exceed $250,000,000 outstanding at any one time to support the operations of San José Clean Energy, to terminate the existing revolving credit agreement and related documents with Barclays Bank PLC, and to take other related actions in connection therewith.

EVALUATION AND FOLLOW-UP

This memorandum recommends the City Council's approval of the Credit Agreement related to SJCE and requires no follow-up to the City Council.

CLIMATE SMART SAN JOSE

The recommendations in this memorandum are consistent with Climate Smart San José energy, water, and mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 13, 2022 City Council meeting, along with other supporting documents.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and financing team participants.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed financing plan is also consistent with the City's Debt Management Policy which establishes objectives in order to obtain cost-effective access to the capital markets, which includes minimizing debt service and issuance costs; maintaining access to cost-effective borrowing; and ensuring compliance with applicable State and Federal laws.

COST IMPLICATIONS

Using conservative assumptions, JPMorgan Chase Bank Credit Facility fees are estimated to cost up to $2.5 million annually. The current FY 2022-2023 Letter of Credit Fees allocation is $1.2 million. As a significant portion of this budget will be expended under the existing Barclay's Agreement, budget adjustment actions are recommended in the San José Clean Energy Fund to increase the Letter of Credit Fees appropriation by $2.5 million, offset by a reduction to the Unrestricted Ending Fund Balance. Professional services (bank expenses, bank counsel fees, municipal advisor fees, borrower counsel fees) and other related costs not to exceed $145,000 are included in Community Energy Department's FY 2022-2023 non-personal/equipment budget, and will be paid from net revenues generated by SJCE in the San José Clean Energy Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the costs associated with the recommended new credit facility with JPMorgan Chase Bank .

Fund #	Appn. #	Appn. Name	Current Appn.	Recommended Budget Action	2022-2023 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
501	410V	Letter of Credit Fees	$1,200,000	$2,500,000	1036	N/A
501	8999	Unrestricted Ending Fund Balance	$170,986,381	($2,500,000)	1036	10/18/2022 Ord. No. 30833

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
JULIA H. COOPER
Director of Finance

/s/
LORI MITCHELL
Director of Community Energy

JIM SHANNON
Budget Director

For questions, please contact Qianyu Sun, Deputy Director, at (408) 535-7832.

Attachment: Appendix: Summary of Business Terms with JPMorgan Chase Bank, N.A.

APPENDIX

SUMMARY OF PROPOSED BUSINESS TERMS WITH JPMORGAN CHASE BANK, N.A.

JPMorgan Chase Bank, N.A., has offered the Credit Facility in the outstanding principal amount of not to exceed $250,000,000 to support SJCE. The Undrawn Fee is charged on the undrawn amount of the Credit Facility available to make revolving loans or issue standby letters of credit at the “Undrawn Fee Rate” corresponding with the table below. The “Letter of Credit Fee Rate” is charged on the total amount of standby letters of credit issued, but not drawn upon. The “Drawn Fee Rate” at any given time, as set forth in the following table, is determined based on the current Term SOFR Rate (in 1 month, 3 month, or 6 month periods, as selected by the City) plus 0.1% and the “SOFR Applicable Margin” for amounts of borrowings outstanding under the Line of Credit. The “Unreimbursed Draw Fee Rate” at any given time, as set forth in the following table, is determined based on the “Alternative Base Rate” plus the “ABR Applicable Margin” for amounts drawn under issued letters of credit.

Revolving Loans Under the Line of Credit

Term	Undrawn Fee Rate		Drawn Fee Rate	
	< 25% Utilization	≥ 25% Utilization	< 25% Utilization	≥ 25% Utilization
5 Years	0.60%	0.57%	Adjusted Term SOFR + 1.50%	Adjusted Term SOFR + 1.425%

Letters of Credit Under the Credit Facility

Term	Undrawn Fee Rate		Letter of Credit Fee Rate	Unreimbursed Draw Fee Rate	
	< 25% Utilization	≥ 25% Utilization		< 25% Utilization	≥ 25% Utilization
5 Years	0.60%	0.57%	1.00%	ABR + 0.50%	ABR + 0.425%

JPMorgan’s commitment to make revolving loans and issue standby letters of credit under the Credit Facility for the account of the City will terminate 5 years after the effective date of the Credit Agreement

Term	Definition
ABR Applicable Margin	0.50%, if total utilization on the Credit Facility is less than 25% of the total remaining commitment; 0.425%, if total utilization on the Credit Facility is greater than or equal to 25% of the total remaining commitment.
Additional Debt Test:	1.30x, which will be tested on a next twelve month basis for all new parity debt issuances
Adjusted Term SOFR Rate	For any day, the sum of (i) the Term SOFR Rate and (ii) 0.1%, provided that if the Adjusted Term SOFR Rate as so determined would be less than zero, such rate shall be deemed equal to zero for the purposes of calculating such rate.
Alternative Base Rate	For any day, the highest of (i) the Prime Rate, (ii) the NYFRB Rate plus 0.5%, and (iii) the Adjusted Term SOFR Rate plus 1.0%. If the ABR as determined pursuant to the foregoing would be less than 1.0%, such rate shall be deemed to be 1.0%.
Debt Service Coverage Ratio:	1.10x, which will be tested quarterly on a rolling last twelve month basis.
Default Rate:	This is the interest rate charged to the City upon the occurrence of certain enumerated events (defined in the Credit Agreement as "Events of Default") and during the period such events continue. For loans based on the Term SOFR Rate, the Default Rate will be calculated at a rate per annum equal to SOFR plus the SOFR Applicable Margin, plus 3%. For outstanding standby letters of credit, the Default Rate will be calculated at a rate per annum equal to the Letter of Credit Fee, plus 3%.
NYFRB	The Federal Reserve Bank of New York

Term	Definition
NYFRB Rate	For any day, the greater of (i) the Federal Funds Effective Rate and (ii) the Overnight Bank Funding Rate; provided that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of calculating such rate.
Prime Rate	For any day, the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by JPMorgan) or any similar release by the Federal Reserve Board (as determine by JPMorgan).
SOFR	A rate equal to the secured overnight financing rate as administered by the SOFR Administrator
SOFR Administrator	The NYFRB (or a successor administrator of the secured overnight financing rate)
SOFR Applicable Margin	1.50%, if total utilization on the Credit Facility is less than 25% of the total remaining commitment; 1.425%, if total utilization on the Credit Facility is greater than or equal to 25% of the total remaining commitment.
Term SOFR Rate	For any day, for an interest period of one, three, or six months, the rate per annum determined by JPMorgan as the forward-looking term rate based on SOFR at approximately 5:00 a.m. Chicago time, two (2) business days prior to the commencement of such interest period, as such rate is published by the Chicago Mercantile Exchange Term SOFR Administrator.