

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, 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 JOSE 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

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 of the San José 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 (collectively, 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 future Power Purchase Agreements with providers of electrical power for the Clean Energy Program under which the City may be required to post collateral to secure the City’s performance of its obligations thereunder; and

WHEREAS, pursuant to Chapter 4.40 of Title 4 of the San José 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 (“Barclays”) previously entered into a Revolving Credit Agreement, dated as of November 1, 2018 (as amended from time to time, the “Barclays Revolving Credit Agreement”) under which Barclays has committed to issue letters of credit for the account of the City to support the operations of the Clean Energy Program; and

WHEREAS, to support the operations of the Clean Energy Program, JPMorgan Chase Bank, N.A. (“JPMorgan”) proposes to provide the City with a credit facility consisting of a revolving line of credit and letter of credit facilities in an aggregate principal amount not to exceed \$250,000,000 outstanding at any time, pursuant to a Revolving Credit Agreement between the City and JPMorgan (the “JPMorgan Revolving Credit Agreement”); and

WHEREAS, the City's obligations under the JPMorgan Revolving Credit Agreement will be secured solely by a pledge and lien on the net revenues of the Clean Energy Program; and

WHEREAS, in connection with the JPMorgan Revolving Credit Agreement, the City desires to enter into the agreements described herein and to provide for the termination of the Barclays Revolving Credit Agreement; and

WHEREAS, the City Council 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 revolving credit and letter of credit facilities under the JPMorgan Revolving Credit Agreement consisting of a revolving loan facility and one or more letter of credit facilities, in an aggregate principal amount not to exceed \$250,000,000 outstanding at any time for a period of up to 5 years from the effective date of the JPMorgan Revolving Credit Agreement, for the purpose of supporting the operations of the Clean Energy Program, including, without limitation, to provide collateral to meet regulatory obligations, and any other lawful purpose.

SECTION 2. The City Council hereby approves the City's negotiation, execution and delivery of the JPMorgan Revolving Credit Agreement, a promissory note in favor of JPMorgan evidencing the City's obligations under the JPMorgan Revolving Credit Agreement (the "Note"), a Fee Agreement between the City and JPMorgan (the "Fee Agreement") and any ancillary or related documents reasonably necessary or advisable in connection therewith. The proposed forms of the JPMorgan Revolving Credit

Agreement, the Note and the Fee Agreement posted to the agenda webpage for this meeting are hereby approved, and any of the City Manager, the Director of Finance, and the Assistant Director of Finance (each an “Authorized Officer” and, collectively, the “Authorized Officers”), acting alone, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the JPMorgan Revolving Credit Agreement, the Note and the Fee Agreement in substantially said forms together with such additions thereto and changes therein as any of the Authorized Officers shall deem necessary, desirable or appropriate upon consultation with the City Attorney, the execution of which by a Authorized Officer shall be conclusive evidence of the approval of any such additions and changes; provided, however, that the City’s obligations under the JPMorgan Revolving Credit Agreement shall be secured solely by a pledge and lien on the net revenues of the Clean Energy Program. The City Council hereby authorizes the performance by the City of its obligations under the JP Morgan Revolving Credit Agreement, the Note, the Fee Agreement and any ancillary or related documents reasonably necessary or advisable in connection therewith.

SECTION 3. The City Council hereby approves the payoff by the City of all amounts due under the Barclays Revolving Credit Agreement and the termination thereof as provided in a payoff and termination letter (the “Barclays Payoff and Termination Letter”) from the City to Barclays, provided that any of the Authorized Officers, each acting alone, may elect to maintain any and all outstanding letters of credit issued by Barclays and to cash collateralize the City’s reimbursement obligations thereunder. The proposed form of the Barclays Payoff and Termination Letter posted to the agenda webpage for this meeting is hereby approved, and any of the Authorized Officers, acting alone, are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Barclays Payoff and Termination Letter, together with such additions thereto and changes therein as the Authorized Officers, each acting alone, shall deem necessary, desirable or appropriate upon consultation with the City Attorney. The City Council hereby authorizes the performance by the City of its obligations under the Barclays Payoff and

Termination Letter and any ancillary or related documents reasonably necessary or advisable in connection therewith.

SECTION 4. Any of the Authorized Officers, each acting alone, are further authorized to execute and deliver one or more extensions or other amendments to the JPMorgan 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 JPMorgan for the commitment to make revolving loans to the City to exceed 1.10% per annum; (ii) the annual fees payable by the City to JPMorgan for the commitment to issue standby letters of credit for the account of the City to exceed 1.10% per annum; (iii) the letter of credit fees payable by the City to JPMorgan on the daily amount available to be drawn under any issued standby letters of credit to exceed 1.50% per annum; and (iv) the spread above the highest benchmark rate of interest charged by JPMorgan on the principal amount of unreimbursed revolving loans to the City and unreimbursed draws under any issued standby letters of credit to exceed 2.00% per annum.

SECTION 5. The Authorized 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 JPMorgan Revolving Credit Agreement, the Note and the Fee Agreement and the Barclays Payoff and Termination Letter (including, without limitation, one or more intercreditor agreements, collateral agreements or other similar agreements), and to pay any and all fees and costs in connection with the payoff and termination of the Barclays 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 _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk