Recommendation
Adopt a Resolution authorizing the Chief Executive Officer to execute an amendment to the Revolving Credit Agreement with Barclays Bank PLC to increase the cash borrowing capacity and increase the letter of credit capacity.

Background and Discussion
Currently, EBCE has a $50 million credit facility (the “facility”) with Barclays Bank PLC (Barclays), executed on March 15, 2018 and amended on August 1, 2019. The facility has a cash borrowing capacity of $25 million and a letter of credit (LC) capacity of $30 million. Currently, EBCE has no outstanding cash balance on this facility.

Staff is proposing to increase the facility to a total of $80 million with a $60 million cash capacity and a $35 million LC capacity. The current market conditions are very favorable in light of strong results from the 2018-2019 fiscal year. An increase in the credit facility will provide increase cash for working capital purposes and improve EBCE’s liquidity metrics, which are viewed favorably by the credit rating agencies. The current cash borrowing rate is LIBOR plus 2.50%. With the proposed increase in size, this rate will stay the same for borrowings up to $25 million and will increase to LIBOR plus 2.65% for any draw above that amount. The LC rate at 1.75% and the undrawn commitment fee at 0.95% will remain unchanged.

In addition to the increase of available borrowing capacity, EBCE will also be required to hold 10% of outstanding balance above $25 million on the cash borrowing sub-facility in reserves. Currently, the Revolving Credit Agreement requires EBCE to hold a fixed amount of $7 million in a reserve account for the facility. At the maximum cash draw of $60 million, an additional $3.5 million would be required to be held in reserves.

With the increase in capacity, the term of the agreement would also be extended to three years from the signing date. Currently, the cash portion of the agreement is set to expire May 15, 2021. With the approval of this amendment, the new sunset date would be approximately December 19, 2022 with the exact date being established at the day of the execution of the agreement. The original RFP sought a credit facility for up to 5 years and up
to $60,000,000. The proposed changes would maintain a duration shorter than 5 years, but would exceed the original facility size. Staff recommends moving forward with this amendment with Barclays without issuing a new RFP in order to move quickly under favorable market conditions. Per the Procurement Policy, staff received approval from the Chair and Vice-Chair of the board to move forward with approval of this amendment without requiring the issuance of a new RFP.

**Fiscal Impact**

Terms & conditions of the proposed changes are provided in the attached Amendment Agreement, and details regarding interest rates, fees, and proceeds are summarized herein to comply with California Government Code Section 5852.1, requiring such presentation to the board.

A. Interest cost per annum:
   a. 1.75% for issued LC’s (without draws made by the LC holder)
   b. LIBOR + 2.50% for cash draws and LC draws not reimbursed on the same day if the overall balance against the facility is less than $25 million
   c. LIBOR + 2.65% for cash draws and LC draws not reimbursed on the same day if the overall balance against the facility is greater than $25 million
   d. 0.95% commitment fee for undrawn amounts of the facility

B. Finance charges to third parties: Estimated to total $75,000 to cover costs such as counsel, recording, and issuance fees

C. Proceeds: Maximum gross proceeds are $80,000,000 for a fully utilized facility. Because this is a revolving credit facility this amount may be lower and fluctuate at any time up to a maximum of $80,000,000.

D. Total Payment amount:
   a. Based on a maximum draw amount of $80,000,000 for the remaining duration of the facility through December 2022, then with a maximum unreimbursed draw on the letter of credit of $35,000,000 through July of 2024, total payment amount accounting for interest and finance charges is estimated at $9,700,000 based on an assumed LIBOR of 2.25%. Total payment under these assumptions, including principal repayment, is estimated at $89,700,000.
   b. Based on an average loan balance of $10,000,000 in cash through December of 2022, and $10,000,000 in issued, drawn and unreimbursed LC through July of 2024, total payment amount accounting for interest, finance charges, and commitment fees is estimated at $2,400,000 based on an assumed LIBOR of 2.25%. Total payment under these assumptions, including principal repayment, is estimated at $22,400,000.

**Attachments**

A. Amendment Agreement to Barclays Revolving Credit Agreement
B. Resolution authorizing the CEO to execute the Amendment Agreement
AMENDMENT AGREEMENT

AMENDMENT AGREEMENT entered into on January 2, 2020 (the “Amendment Agreement”) between EAST BAY COMMUNITY ENERGY AUTHORITY (the “Borrower”) and BARCLAYS BANK PLC, together with any successors and assigns (the “Bank”).

W I T N E S S E T H:

WHEREAS the Borrower and the Bank entered into an Amended and Restated Revolving Credit Agreement, originally dated March 15, 2018, as amended and restated as of August 1, 2019 (the “Original Agreement”); and

WHEREAS, the Borrower has requested that the Commitment available to the Borrower under the Original Agreement be increased;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereto agree as follows:

1. Amendment. The Borrower and the Bank hereby agree that effective on the date hereof:

   (a) The definition of “Applicable Spread” in Section 1.01 of the Original Agreement is amended to read as follows:

       “Applicable Spread’ means, as of any date of determination, (a) prior to August 1, 2019, (i) with respect to Collateralized Loans (as defined in the Prior Agreement), one hundred forty basis points (1.40%) and (ii) with respect to Uncollateralized Loans (as defined in the Prior Agreement), five hundred twenty-five basis points (5.25%), and (b) on and including August 1, 2019 and thereafter, (i) two hundred fifty basis points (2.50%) for Loans (or portions thereof) and Unreimbursed Amounts (or portions thereof) when the Borrowed Amount Outstanding is less than or equal to $25,000,000, and (ii) two hundred sixty-five basis points (2.65%) for any Loans (or portions thereof) and Unreimbursed Amounts (or portions thereof), when the Borrowed Amount Outstanding is in excess of $25,000,000, in each case, taking into account any Loans or Unreimbursed Amounts to be advanced on such date.”

   (b) The definition of “Available Commitment” in Section 1.01 of the Original Agreement is amended to read as follows:

       “Available Commitment’ means an amount equal to $80,000,000 adjusted from time to time as follows: (a) downward in an amount equal to any Loan made to, and an amount equal to the L/C Obligations related to any Letter of Credit issued for the account of, the Borrower under the Commitment; (b) prior to the Loan Facility Scheduled Termination Date only, upward in an amount equal to the principal amount of any Loan made to the
Borrower under the Commitment that is repaid or prepaid in the manner provided herein; (c) upward in an amount equal to the principal amount equal to the L/C Obligations related to any Letter of Credit issued for the account of the Borrower under the Commitment that is repaid, prepaid, expires or terminates, as applicable, in the manner provided herein; (d) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 hereof; (e) downward to the Letter of Credit Sublimit on the Loan Facility Scheduled Termination Date; and (f) downward to zero upon the Commitment Termination Date in accordance with the terms hereof; provided, that, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed (i) $80,000,000 from January 2, 2020 to but excluding Loan Facility Scheduled Termination Date, and (ii) $35,000,000 from and after the Loan Facility Scheduled Termination Date.”

(c) The following definition is added after the definition of “Borrower” in Section 1.01 of the Original Agreement:

“‘Borrowed Amount Outstanding’ means the aggregate principal amount of Loans plus the aggregate principal amount of Unreimbursed Amounts outstanding at any time.”

(d) The definition of “Commitment” in Section 1.01 of the Original Agreement is amended to read as follows:

“‘Commitment’ means the Bank’s obligation to (a) make Loans to the Borrower pursuant to Section 2.01 and (b) issue Letters of Credit for the account of the Borrower pursuant to Section 2.03. Subject at all times to Sections 2.04 and 6.02 hereof, the Commitment from (x) January 2, 2020 to but excluding the Loan Facility Scheduled Termination Date shall be $80,000,000, and (y) the Loan Facility Scheduled Termination Date and at all times thereafter shall be $35,000,000.”

(e) The definition of “Letter of Credit Sublimit” in Section 1.01 of the Original Agreement is amended to read as follows:

“‘Letter of Credit Sublimit’ means an amount equal to the lesser of (a) $35,000,000 and (b) the Commitment. The Letter of Credit Sublimit is part of, and not in addition to, the Commitment.”

(f) The definition of “Loan Facility Scheduled Termination Date” in Section 1.01 of the Original Agreement is amended to read as follow:

“‘Loan Facility Scheduled Termination Date’ means January 2, 2023.”

(g) The definition of “Loan Sublimit” in Section 1.01 of the Original Agreement is amended to read as follows:

“‘Loan Sublimit’ means an amount equal to the lesser of (a) $60,000,000 and (b) the Commitment. The Loan Sublimit is part of, and not in addition to, the Commitment.”
The definition of “Operating Reserve Fund Requirement” in Section 1.01 of the Original Agreement is amended to read as follows:

“Operating Reserve Fund Requirement’ means (i) initially, an amount equal to $7,000,000, and (ii) any time the aggregate principal amount of Loans outstanding is in excess of $25,000,000, the sum of (a) $7,000,000 plus (b) 10% of the amount by which the aggregate principal amount of Loans outstanding exceeds $25,000,000.

Section 5.29(e) of the Original Agreement is amended to read as follows:

“If, on any date, the balance in the Operating Reserve Fund of the Borrower shall be less than the amount required pursuant to clause (d) above, the Borrower shall, within thirty (30) days of such date, deposit sufficient additional funds into the Operating Reserve Fund to satisfy such requirement; provided, however, if the Operating Reserve Fund Requirement increases above $7,000,000 pursuant to the terms hereof, the Borrower shall concurrently with such increase in the Operating Reserve Fund Requirement deposit moneys in the Operating Reserve Fund in an amount sufficient to meet the increased Operating Reserve Fund Requirement.”

2. Representations. In addition to the representations and warranties set forth in Article IV of the Original Agreement, which are hereby deemed repeated by each Borrower as of the date hereof, the Borrower hereby represents and warrants to the Bank that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;

(b) it has the power to execute and deliver this Amendment Agreement and to perform its obligations under the Original Agreement, as amended by this Amendment Agreement, and has taken all necessary action to authorize such execution, delivery and performance;

(c) the person signing this Amendment Agreement on its behalf is duly authorized to do so;

(d) it has obtained all governmental and other consents and authorizations that it is required to obtain in connection with its execution and delivery of this Amendment Agreement, all such consents and authorizations are in full force and effect and all conditions of any such consents and authorizations have been complied with;

(e) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its articles and by-laws, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(f) its obligations under the Original Agreement, as amended by this Amendment Agreement, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as
to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or in law).

3. **Agreement Ratified and Confirmed.** Except as expressly modified by this Amendment Agreement, the Original Agreement is in all respects ratified and confirmed and the terms, provisions and conditions thereof are and shall remain in full force and effect. From and after the date hereof all references to the Original Agreement shall mean such agreement as amended by the terms hereof.

4. **Governing Law and Jurisdiction.** This Amendment Agreement shall be governed by and construed in accordance with the governing law and jurisdiction provision set forth in the Original Agreement, as amended by this Amendment Agreement.

5. **Documents to be Delivered.** On or prior to the date hereof, the Borrower shall deliver to the Bank:

   (a) evidence reasonably satisfactory to the Bank of the (i) authority of the Borrower to enter into this Amendment Agreement and (ii) authority and genuine signature of the individual signing this Amendment Agreement on behalf of the Borrower to execute the same;

   (b) a certified copy of the resolution or resolutions (or the equivalent thereof) of the governing body of the Borrower, certified by an official of the Borrower, pursuant to which the Borrower is authorized to enter into this Amendment Agreement; and

   (c) an executed opinion of counsel to the Borrower, in form and substance satisfactory to the Bank, as to the due authorization, execution and delivery of this Amendment Agreement, and that the Original Agreement, as amended by this Amendment Agreement, is valid, binding, and enforceable against the Borrower.

6. **Fees.** In connection with this Amendment Agreement, the Borrower shall pay the fees and expenses of McDermott Will & Emery LLP, counsel to the Bank, in connection with this Amendment Agreement.

7. **Entire Agreement.** The Original Agreement, as amended by this Amendment Agreement, constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.

8. **Definitions.** Capitalized terms used in this Amendment Agreement and not otherwise defined herein shall have the meanings specified for such terms in the Original Agreement.

9. **Counterparts.** This Amendment Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

[Remainder of this page intentionally blank]

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment Agreement as of the date first above written.

BARCLAYS BANK PLC

By: ______________________________
R. Cassandra Bolz
Authorized Signatory for and on
behalf of Barclays Bank PLC

EAST BAY COMMUNITY ENERGY AUTHORITY

By: ______________________________
Name:
Title:
RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
APPROVING AN
AGREEMENT AMENDING THE REVOLVING CREDIT AGREEMENT WITH
BARCLAYS BANK PLC, AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO
EXECUTE THE SAME ON BEHALF OF THE AUTHORITY, AND CERTAIN
RELATED MATTERS

WHEREAS, pursuant to Resolutions Nos. R-2018-3 and R-2019-25, adopted on
February 28, 2018 and July 17, 2019, respectively, by the Board of Directors of the East Bay
Community Energy Authority (“EBCE”), EBCE has previously entered into an Amended and
Restated Revolving Credit Agreement, originally dated March 15, 2018, as amended and restated
as of August 1, 2019 (the “Credit Agreement”), with Barclays Bank PLC (“Barclays”); and

WHEREAS, the Credit Agreement provides EBCE with a cash borrowing capacity of
$25 million and a letter of credit capacity of $30 million (the “Credit Facility”) for the purposes
of increasing liquidity and purchasing power and facilitating essential collateral postings in the
form of letters of credit in lieu of cash; and

WHEREAS, EBCE desires, and Barclays is willing, to amend the Credit Agreement to
increase the cash borrowing capacity and increase the letter of credit capacity, as follows
(collectively, the “Credit Facility Amendments”): (i) increasing the cash borrowing capacity
from $25 million to $60 million, and increasing the letter of credit capacity from $30 million to
$35 million, subject to a maximum total credit facility amount of $80 million through the
expiration of the cash borrowing sub-facility and $35 million thereafter; (ii) extending the
expiration of the term for the cash borrowing sub-facility from May 15, 2021 to three years after
execution of the Amendment Agreement (as defined below); and (iii) maintaining the existing
interest rate for any cash borrowings and draws made by letter of credit holders not reimbursed
by EBCE on the same day totaling $25 million or less in aggregate amount concurrently
outstanding, while increasing the interest rate for the portion of such sums in excess of $25
million in aggregate amount concurrently outstanding by fifteen basis points (collectively, the
“Credit Facility Amendments”); and

WHEREAS, pursuant to subsection 4.7 of Section II of the Third Amended and Restated
Administrative Procurement Policy (Policy Number 1.5), adopted by the Board of Directors on
November 20, 2019, the Chair and the Vice Chair of the Board of Directors have approved the
suspension of the procurement method requirements of Section V (Professional Services
Procurement) of the policy by the Chief Executive Officer in connection with the proposed
Credit Facility Amendments; and

WHEREAS, there has been presented at this meeting a proposed form of Amendment
Agreement (the “Amendment Agreement”) to be entered into by EBCE and Barclays to facilitate
the Credit Facility Amendments; and
WHEREAS, in compliance with Government Code Section 5852.1, EBCE has obtained from Barclays the certain required good faith estimates and such estimates have been disclosed at this meeting;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS

SECTION 1. The above recitals, and each of them, are true and correct.

SECTION 2. The Board of Directors hereby approves and authorizes amendment of the terms of the Credit Facility to incorporate the Credit Facility Amendments. The proposed form of the Amendment Agreement presented to this meeting and on file with the Secretary is hereby approved, and the Chief Executive Officer is hereby authorized and directed, for and in the name and on behalf of EBCE, to execute and deliver to Barclays the Amendment Agreement in substantially said form, with such changes thereto as the Chief Executive Officer, after consultation with counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The Chief Executive Officer and the Secretary of the Board, and other appropriate officers of EBCE, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of EBCE, to execute and deliver any and all documents, certificates, representations, and agreements as they, with the advice of counsel, shall approve, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Board of Directors has approved in this Resolution.

SECTION 4. All actions heretofore taken by the officers and agents of EBCE with respect to the Credit Facility Amendments and the Amendment Agreement are hereby ratified, confirmed and approved.

ADOPTED AND APPROVED this 18th day of December, 2019.

________________________
Dan Kalb, Chair

ATTEST:

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Stephanie Cabrera, Clerk of the Board