
REVOLVING CREDIT AGREEMENT

dated as of [____], 2023

between

CITY OF SAN JOSE, CALIFORNIA

and

JPMORGAN CHASE BANK, N.A.

TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE I	DEFINITIONS AND ACCOUNTING TERMS	1
Section 1.01.	Definitions.....	1
Section 1.02.	Accounting Terms and Determinations	24
Section 1.03.	Letter of Credit Amounts	24
Section 1.04.	Classification of Loans and Borrowings.....	25
ARTICLE II	THE COMMITMENT.....	25
Section 2.01.	Loans.....	25
Section 2.02.	Borrowings of Loans.....	25
Section 2.03.	Letters of Credit	26
Section 2.04.	Prepayments.....	31
Section 2.05.	Termination or Reduction of Commitment; Extensions of Existing Maturity Date; Reallocation of Working Capital Sublimit.....	32
Section 2.06.	Repayment of Loans	33
Section 2.07.	Interest.....	33
Section 2.08.	Fees	34
Section 2.09.	Computation of Interest and Fees	34
Section 2.10.	Evidence of Debt.....	34
Section 2.11.	Payments	35
Section 2.12.	Maximum Interest Rate.....	35
Section 2.13.	Interest Elections.....	35
Section 2.14.	Alternate Rate of Interest; Illegality	36
Section 2.15.	Cash Collateral.....	39
Section 2.16.	Payment and Security for Obligations	40
ARTICLE III	CONDITIONS PRECEDENT TO BORROWINGS	40
Section 3.01.	Conditions of Initial Borrowing; Authority; Enforceability	40
Section 3.02.	Conditions to All Credit Extensions	41
ARTICLE IV	REPRESENTATIONS AND WARRANTIES OF THE CITY	42
Section 4.01.	Organization, Powers, Etc.....	42
Section 4.02.	Authorization, Absence of Conflicts, Etc.	42
Section 4.03.	Governmental Consent or Approval	43
Section 4.04.	Binding Obligation.....	43
Section 4.05.	Absence of Material Litigation	43
Section 4.06.	Financial Condition.....	43
Section 4.07.	Amendments	43
Section 4.08.	Liens.....	43
Section 4.09.	No Defaults	43
Section 4.10.	No Proposed Legal Changes	44

Section 4.11.	Compliance	44
Section 4.12.	Environmental Laws	44
Section 4.13.	Margin Stock.....	44
Section 4.14.	ERISA	44
Section 4.15.	Incorporation of Representations and Warranties by Reference	44
Section 4.16.	Immunity.....	45
Section 4.17.	Anti-Terrorism Laws	45
Section 4.18.	Existing Parity Debt and Subordinate Debt	45
Section 4.19.	No Existing Right to Accelerate	46
ARTICLE V	AFFIRMATIVE COVENANTS OF THE CITY.....	46
Section 5.01.	Reports, Certificates and Other Information.....	46
Section 5.02.	Inspections; Discussion.....	47
Section 5.03.	Preservation of Pledge	48
Section 5.04.	Taxes and Liabilities	48
Section 5.05.	Ratings	48
Section 5.06.	Compliance with Basic Documents; Operation and Maintenance of Community Energy Program	48
Section 5.07.	Disclosure to Participants	49
Section 5.08.	Further Assurances.....	49
Section 5.09.	Existence, Etc.....	49
Section 5.10.	No Different or More Restrictive Terms	49
Section 5.11.	Debt Service Coverage Ratio.....	49
Section 5.12.	Maintenance of Insurance	50
Section 5.13.	Accuracy of Information.....	50
ARTICLE VI	NEGATIVE COVENANTS OF THE CITY.....	50
Section 6.01.	Compliance with Laws, Etc.	51
Section 6.02.	Additional Debt.....	51
Section 6.03.	Swap Contracts	52
Section 6.04.	Amendments	52
Section 6.05.	Waiver of Immunity.....	52
Section 6.06.	Offering Documents.....	52
Section 6.07.	Liens on Net Revenues	53
Section 6.08.	Use of Proceeds.....	53
Section 6.09.	Available Net Revenues.....	53
ARTICLE VII	EVENTS OF DEFAULT AND REMEDIES	54
Section 7.01.	Events of Default	54
Section 7.02.	Consequences of an Event of Default.....	56
Section 7.03.	Solely for the Benefit of Purchaser	57
Section 7.04.	Discontinuance of Proceedings.....	57
ARTICLE VIII	CHANGE IN CIRCUMSTANCES.....	57

Section 8.01.	Increased Costs	57
Section 8.02.	Net of Taxes, Etc.....	59
Section 8.03.	Break Funding Payments	60
Section 8.04.	Mitigation Obligation.....	60
Section 8.05.	Survival	60
ARTICLE IX	MISCELLANEOUS	61
Section 9.01.	Notices	61
Section 9.02.	No Waivers	62
Section 9.03.	Expenses; Indemnification.....	62
Section 9.04.	Amendments and Waivers	63
Section 9.05.	Successors and Assigns; Participation	63
Section 9.06.	Registers.....	64
Section 9.07.	Counterparts; Integration	64
Section 9.08.	Governing Law	64
Section 9.09.	Jurisdiction; Venue; Waiver of Jury Trial	64
Section 9.10.	Payments Set Aside.....	65
Section 9.11.	Survival of Representations and Warranties.....	65
Section 9.12.	Severability	65
Section 9.13.	No Advisory or Fiduciary Relationship.....	66
Section 9.14.	Electronic Execution of Certain Documents.....	66
Section 9.15.	USA Patriot Act	67
EXHIBITS:		
EXHIBIT A	— Form of Note	
EXHIBIT B	— Form of Borrowing Request	
EXHIBIT C	— Form of Notice of Loan Prepayment	
EXHIBIT D	— Form of Letter of Credit Request	
EXHIBIT E	— Form of Compliance Certificate	

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”) is entered into as of [____], 2023, between CITY OF SAN JOSE, CALIFORNIA (the “*City*”) and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “*Lender*”).

PRELIMINARY STATEMENTS

WHEREAS, pursuant to the hereinafter defined Ordinance No. 30028, the City established a community-wide electricity program known as “San Jose Clean Energy” (as more fully described herein and defined below as the “*Community Energy Program*”); and

WHEREAS, the City wishes to obtain credit from the Lender hereunder and the Lender is willing, upon the terms and subject to the conditions set forth below, to provide such credit to the City for use for the Community Energy Program as described herein; and

WHEREAS, all obligations of the City to repay the Lender for Credit Extensions (as defined herein) made by the Lender under the Commitment (as defined herein), and interest thereon, are created under and will be evidenced by this Agreement, the Fee Agreement (as defined herein) and the Note (as defined herein), and will be secured solely by a pledge of and lien on Net Revenues (as defined herein);

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the Lender to extend to the City the Commitment, the City and the Lender hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms, as used herein, have the following meanings:

“*ABR*”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“*Adjusted Daily Simple SOFR*” means an interest rate per annum equal to (a) the Daily Simple SOFR, *plus* (b) 0.10%; *provided that* if Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“*Adjusted Term SOFR Rate*” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, *plus* (b) 0.10%; *provided that* if the

Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Affiliate” means as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided that* for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1%, such rate shall be deemed to be 1% for purposes of this Agreement.

“Annual Debt Service” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (A) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, the Letters of Credit, other Parity Debt and Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period, and (B) the sum of the (i) quotient obtained by dividing the average daily outstanding principal balance of the Loans, Parity Debt (other than the City’s payment Obligations under this Agreement), and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5 and (ii) quotient obtained by dividing the average daily amounts available to be drawn under outstanding Letters of Credit during such Fiscal Year or other designated four fiscal quarter period by 10.

“Applicable Rate” has the meaning set forth in the Fee Agreement.

“Agreement” has the meaning set forth in the introductory paragraph hereof.

“Anti-Terrorism Laws” has the meaning set forth in Section 4.17 hereof

“*Authority*” means the City of San José Financing Authority, a public body, corporate and politic, duly organized and existing under the laws of the State.

“*Authorized Officer*” means the City Manager, the Director of Finance, the Assistant Director of Finance, the Director of the Community Energy Program and any other person authorized from time to time in writing by the City to perform a designated act or execute a designated document.

“*Availability*” means, as of any date of determination, the Commitment minus the Revolving Credit Exposure, in each case as determined on such date.

“*Availability Period*” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then removed from the definition of “Interest Period” pursuant to subclause (e)(i) of Section 2.14.

“*Barclays Obligations*” means all obligations due and owing to Barclays Bank PLC pursuant to the Revolving Credit Agreement dated as of November 1, 2018, between the City and Barclays Bank PLC, as amended, restated, supplemented or otherwise modified from time to time.¹

“*Basic Documents*” means this Agreement, the Fee Agreement, the Note and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder. For the avoidance of doubt, Power Purchase Agreements are not Basic Documents.²

“*Benchmark*” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; *provided* that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to subclause (e)(i) of Section 2.14.

¹ **NTD:** City to please provide as soon as possible a list of outstanding letters of credit issued under the Barclays Revolving Credit Agreement that will be cash collateralized with Barclays at closing pending reissuance by JPM under this Agreement.

² **NTD:** Subject to completion of Lender diligence.

“*Benchmark Replacement*” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

- (1) the Adjusted Daily Simple SOFR;
- (2) the sum of: (a) the alternate benchmark rate that has been selected by the Lender and the City as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the City for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Lender

decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

“*Benchmark Replacement Date*” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such

Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.14.

“*Borrowing*” means the making of a Loan by the Lender to the City pursuant to Section 2.01 hereof.

“*Borrowing Request*” means a notice in writing of a Borrowing pursuant to Section 2.02(a), which shall be substantially in the form of *Exhibit B* attached hereto, or such other form as may be approved by the Lender (including any form on an electronic platform or electronic transmission system as shall be approved by the Lender), appropriately completed and signed by an Authorized Officer (other than the Director of the Community Energy Program).

“*Borrowing Date*” has the meaning set forth in Section 2.02 hereof.

“*Business Day*” means any day, other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York, New York or San Jose, California.

“Cash and Cash Equivalents” means, as of any date of determination, the cash on hand of the City derived from Revenues, demand deposits of Revenues, and any of the following short-term investments purchased with proceeds of Revenues, in each case as of such date and which are not legally restricted: (a) readily marketable obligations issued or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States of America is pledged in support thereof; (b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof; (c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 90 days from the date of acquisition thereof; (d) investments, classified in accordance with GAAP as current assets of the City in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; **[(e) investments in the Local Agency Investment Fund established pursuant to Section 16429.1 of the California Government Code and maintained by the Treasurer of the State of California; and (f) investments in the City’s investment pool].**³

“Cash Collateral Loan” means a Loan (or a portion of a Loan) made under the Working Capital Sublimit, the proceeds of which are deposited with a Person other than the City in order to secure the City’s payment obligations under one or more Power Purchase Agreements.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (the “Basel Committee”), or any successor or similar authority, or the United States or foreign regulatory authorities, in each case pursuant to the regulatory standards established by the Basel Committee with respect to bank

³ **NTD:** Subject to Lender diligence.

capital adequacy, stress testing and market liquidity risk and commonly referred to as “Basel III,” shall in each case be deemed to be a “*Change in Law*”, regardless of the date enacted, adopted or issued.

“*City*” has the meaning set forth in the introductory paragraph hereof.

“*City’s Account*” means an account of the City of which the City informs the Lender in writing and which the Lender confirms in writing and telephonic notice.

[“*City POLR Bridge Interfund Loans*” means one or more loans made by one or more funds of the City to the Community Energy Program prior to the Effective Date, the proceeds of which are used by the City to post collateral to another Person pursuant to the requirements of a Governmental Authority (including California Public Utilities Commission), including the collateral requirements of the California Public Utilities Commission with respect to providers of last resort in an aggregate principal amount equal \$[_____].]⁴

“*City Working Capital Interfund Loans*” means one or more loans made by one or more funds of the City to the Community Energy Program from time to time to finance the purchase of power and/or pay other operating costs of the Community Energy Program in the aggregate principal amount not to exceed \$95,000,000.⁵

“*CME Term SOFR Administrator*” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the Lender’s obligation to make Loans to the City pursuant to Section 2.01 and issue Letters of Credit for the account of the City pursuant to Section 2.03, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.05(a) hereof. The initial amount of the Commitment is \$250,000,000.

“*Community Energy Aggregation Act*” means Assembly Bill No. 117, Chapter 838, signed into law on September 24, 2002, as codified in Sections 218.3, 366, 394, 395.25, 331.1, 366.2 and 381.1 of the Public Utilities Code of the State of California.

4 **NTD:** Concept to be deleted if no such bridge loans are made.

5 **NTD:** Subject to Lender diligence.

“*Community Energy Program*” means the Community Choice Aggregation program in the City called “San Jose Clean Energy,” established under Title 26, Community Energy, of the City’s Municipal Code, as amended, supplemented or otherwise modified from time to time.

“*Community Energy Program Debt*” means Debt of the City secured by a Lien on Revenues or Net Revenues.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“*Costs of Issuance*” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, execution and delivery of this Agreement, the Note and the Letters of Credit, including fees, charges, disbursements and expenses of attorneys, municipal advisors, accounting firms, consultants and other professionals, and fees and charges for the preparation, execution and delivery of this Agreement, the Note and the Letters of Credit.

“*Covered Entity*” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Credit Extension*” means each of the following: (a) a Borrowing and (b) an LC Credit Extension.

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal SOFR for the day (such day “*SOFR Determination Date*”) that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the City.

“*Days Liquidity on Hand*” means, as of any date of determination, the quotient, in number of days, obtained by dividing (i) sum of the Cash and Cash Equivalents and the Working Capital Availability on such date of determination by (ii) the product of (A) the sum of Operation and Maintenance Expenses and Interest Expense for the four consecutive fiscal quarter period ended on or immediately prior to such date of determination and (B) 1/365.

“*Debt*” of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business and not more than ninety (90) days past due, (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons and (g) the net obligations of such Person under any Swap Contract. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“*Debt Service Coverage Ratio*” means, determined as of the last day of any fiscal quarter of the City, the ratio obtained by dividing (i) Net Revenues by (ii) the Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

“*Debt Service Coverage Ratio Notice*” has the meaning set forth in Section 5.11.

“*Default Rate*” has the meaning set forth in the Fee Agreement.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Dodd-Frank Act*” means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as enacted by the United States Congress, and signed into law on July 21, 2010, and all statutes, rules, guidelines or directives promulgated thereunder.

“*Dollar*” and “*\$*” mean lawful money of the United States.

“*Effective Date*” means [_____], 2023, subject to the satisfaction or waiver by the Lender of the conditions precedent set forth in Section 3.01 hereof.

“*Electronic Signature*” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” has the meaning set forth in Section 7.01 of this Agreement.

“Excess Interest” has the meaning specified in Section 2.12 hereof.

“Excluded Taxes” means, with respect to the Lender, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the City is located.

“Executive Order” has the meaning set forth in Section 4.17 hereof

“Existing Maturity Date” has the meaning set forth in Section 2.05(b)(i) hereof.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; *provided* that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Agreement” means the Fee Agreement of even date herewith between the City and the Lender, as supplemented, amended, restated or otherwise modified from time to time in accordance with the terms hereof.

“Final Letter of Credit Expiration Date” means the earlier of (i) the date on which the Lender declares its obligation to make Credit Extensions terminated under Section 7.02 hereof and (ii) the day that is thirty (30) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Fiscal Year” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“Fitch” means Fitch Ratings and its successors and assigns.

“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR shall be zero.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“*Governmental Authority*” means the government of the United States of America or any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Guarantee*” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “*Guarantee*” as a verb has a corresponding meaning.⁶

“*Honor Date*” has the meaning set forth in Section 2.03(d) hereof.

⁶ **NTD:** Subject to Lender review.

“*Indemnified Costs*” has the meaning set forth in Section 9.03(b) hereof.

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“*Interest Election Request*” means a request by the City to convert or continue a Borrowing (other than an ABR Borrowing of a Reimbursement Loan) in accordance with Section 2.13, in a form approved by the Lender and signed by the City.

“*Interest Expense*” means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under capitalized leases that is treated as interest in accordance with GAAP, in each case, of or by the City with respect to the Community Energy Program for such period.

“*Interest Payment Date*” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and the Maturity Date, (b) with respect to any RFR Loan, (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date and (c) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and the Maturity Date.

“*Interest Period*” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the applicable Benchmark), as the City may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“*ISP*” means, with respect to any Letter of Credit, means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by the Lender on the date such Letter of Credit is issued.

“*Laws*” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Lender*” has the meaning set forth in the introductory paragraph hereof.

“*Lending Office*” means the office of the Lender to which notices of Borrowings hereunder shall be given by the City and to which payments of amounts due hereunder shall be made, which is set forth in Section 9.01 hereof.

“*LC Collateral Account*” has the meaning set forth in Section 2.15(a) hereof.

“*LC Credit Extension*” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“*LC Document*” means with respect to any Letter of Credit, the Letter of Credit Request, and any other document, agreement and instrument entered into by the Lender and/or the City relating to such Letter of Credit.

“*LC Expiration Date Sublimit (Five-Years)*” means, as of the Effective Date, \$100,000,000, subject to the terms and conditions set forth herein and modification from time to time in accordance with Section 2.05(c).

“*LC Expiration Date Sublimit (Two-Years)*” means, as of the Effective Date, \$100,000,000, subject to the terms and conditions set forth herein and modification from time to time in accordance with Section 2.05(c).

“*LC Exposure*” means, as at any date of determination, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit, plus (b) the aggregate of all Reimbursement Obligations.

“*LC Exposure (Five-Year Sublimit)*” means, as at any date of determination, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit (Five-Year Expiration Date), plus (b) the aggregate of all Reimbursement Obligations (Five-Year Expiration Date), plus (c) the aggregate amount of all Reimbursement Loans outstanding the proceeds of which were used to Reimbursement Obligations (Five-Year Expiration Date).

“*LC Exposure (Two-Year Sublimit)*” means, as at any date of determination, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit (Two-Year Expiration Date), plus (b) the aggregate of all Reimbursement Obligations (Two-Year Expiration Date), plus (c) the aggregate amount of all Reimbursement Loans outstanding the proceeds of which were used to repay Reimbursement Obligations (Two-Year Expiration Date).

“*LC Facility Fee*” has the meaning set forth in the Fee Agreement.

“*Letter of Credit*” means any standby letter of credit issued hereunder.

“*Letter of Credit (Five-Year Expiration Date)*” means any Letter of Credit with a Letter of Credit Expiration Date that is more than two (2) years after the date of issuance thereof.

“*Letter of Credit (Two-Year Expiration Date)*” means any Letter of Credit with a Letter of Credit Expiration Date that is two (2) years or less after the date of issuance thereof.

“*Letter of Credit Expiration Date*” means, with respect to any Letter of Credit, the stated expiration date thereof.

“*Letter of Credit Request*” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Lender.

“*Liquidity Cure Right*” has the meaning set forth in Section 5.11 hereof.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Loan*” means, individually or collectively, as applicable, the loans extended pursuant to Section 2.01 hereof and all Reimbursement Loans.

“*Material Adverse Change*” means any material or adverse change in the operations, assets, liability or financial condition of the Community Energy Program which could reasonably be expected to materially adversely impair the City’s ability to pay its Obligations under this Agreement.

“*Material Adverse Effect*” means: (a) a material adverse effect on the operations, assets, liability or financial condition of the Community Energy Program; (b) a material impairment of the rights and remedies or security or interests of the Lender under this Agreement or any other Basic Document, or of the ability of the City to perform its Obligations under this Agreement or any other Basic Document to which it is a party, (c) a material adverse effect upon the legality, validity, binding effect or enforceability of the City’s obligations under this Agreement, any other Basic Document to which the City is a party, or (d) a material adverse effect on the rights,

interests, security or remedies of the Lender with respect to this Agreement or any other Basic Document or the Ordinance.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on [____], 2028⁷, or such later date to which the Maturity Date may be extended pursuant to Section 2.05(b) hereof and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Interest Rate*” means the maximum rate of interest on the relevant obligation permitted by applicable law, if any.

“*Minimum Collateral Amount*” has the meaning set forth in Section 2.15(a) hereof.

“*Moody’s*” means Moody’s Investors Service and its successors and assigns.

“*Net Revenues*” means, for any period the same is to be determined, the Revenues for such period less all Operation and Maintenance Expenses during such period.

“*Note*” means that certain Note dated the Effective Date of the City, in favor of the Lender, evidencing the outstanding Loans made by and any Reimbursement Obligations owing to the Lender and substantially in the form of *Exhibit A* hereto.

“*Notice of Loan Prepayment*” means a notice of prepayment with respect to a Loan which shall be substantially in the form of *Exhibit C* or such other form as may be approved by the Lender (including any form on an electronic platform or electronic transmission system as shall be approved by the Lender), appropriately completed and signed by an Authorized Officer (other than the Director of the Community Energy Program).

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB’s Website*” means the website of the NYFRB currently at <http://www.newyorkfed.org>, or any successor website thereof.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); *provided* that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a federal funds broker of recognized standing selected by it; *provided, further*, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

⁷ **NTD:** To be the date that is the fifth anniversary of the Effective Date.

“*Obligations*” means the obligations of the City under this Agreement to repay (i) all Loans, all LC Exposure, all amounts due under the Fee Agreement (including, but not limited to, all amounts due with respect to the Undrawn Fee and the LC Facility Fee) and the Note, together with interest thereon, pursuant to and in accordance with this Agreement and the Note, (ii) all fees, and (iii) all expenses and charges payable or reimbursable hereunder to the Lender (including, without limitation, any amounts to reimburse the Lender for any advances or expenditures by it under any of such documents) and all other payment obligations of the City to the Lender arising under or in relation to this Agreement or the other Basic Documents, in each case whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired.

“*OFAC*” means the United States Department of Treasury Office of Foreign Assets Control.

“*Operation and Maintenance Expenses*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and means the reasonable and necessary costs paid or incurred by City for maintaining and operating the Community Energy Program, including, without duplication, costs of electric energy and power purchased, costs of transmission, costs of fuel supply, the cost of preparing and filing regulatory plans, reports, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Community Energy Program in good repair and working order, and including all administrative costs of City that are charged directly or apportioned to the maintenance and operation of the Community Energy Program, such as salaries and wages of employees, **[retirement benefits]**⁸, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of the City such as fees and expenses of legal counsel and an independent certified public accountant, and including City’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. For the avoidance of doubt, “*Operation and Maintenance Expenses*” shall include all amounts paid, or required to be paid, by City under contracts for the purchase of Power Products under Power Purchase Agreements and do not include any amounts paid, or required to be paid, by the City thereunder as collateral for the City’s obligations thereunder or any other collateral obligations of the City as required by the California Public Utilities Commission.

“*Ordinance No. 30028*” means that certain Ordinance No. 30028 adopted by the City Council passed for publication of title on the 7th day of November, 2017, and given final reading and adopted by the Council of the City on the 28th day of November, 2017.

⁸ **NTD**: Subject to Lender diligence.

“*Ordinance No. 30121*” means that certain Ordinance No. 30121 passed for publication of title on the 19th day of June, 2018, and given final reading and adopted by the Council of the City on the 26th day of June, 2018.

“*Ordinances*” means Ordinance No. 30028 and Ordinance No. 30121.

“*Other Credit Agreement*” means any credit agreement, bank agreement, covenant agreement, purchase agreement, loan agreement or reimbursement agreement to which the City or the Authority is or may hereafter become a party (other than this Agreement) that is secured by or payable from Revenues or Net Revenues, with a notional or principal amount or amounts, as applicable, in the aggregate, of \$20,000,000 or more concurrently outstanding.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“*Outstanding Amount*” means, individually or collectively, as applicable, (a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans, as the case may be, occurring on such date; and (b) with respect to any LC Exposure on any date, the aggregate amount of such LC Exposure on such date after giving effect to any LC Credit Extension occurring on such date and any other changes in the aggregate amount of the LC Exposure as of such date, including as a result of any reimbursements by the City of Reimbursement Obligations.

“*Overnight Bank Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“*Parity Debt*” means any Community Energy Program Debt issued or incurred by the City (i) the payment of which is on parity with the City’s payment Obligations under this Agreement and (ii) that is subject to an intercreditor agreement in form and substance satisfactory to the Lender.

“*Participation*” has the same meaning given such term in Section 9.05(d).

“Participant Register” has the same meaning given such term in Section 9.06(b).

“Patriot Act” has the same meaning given such term in Section 9.14.

“Person” means an individual, a corporation, a partnership, an association, a trust, a Governmental Authority or any other entity or organization of whatever nature.

“Potential Event of Default” means any condition or event which, with the giving of notice or lapse of time, or both, would, unless cured or waived, become an Event of Default.

“Power Products” has the meaning set forth in Title 26 of the City’s Municipal Code, as amended.

“Power Purchase Agreement” means any agreement for the purchase of Power Products executed between the City and another Person. A Power Purchase Agreement may be for short term or multi-year transactions for the purchase of Power Products.

“Prepayment Notice Date” has the meaning assigned to it in Section 8.03.

“Prepayment Premium” has the meaning assigned to it in Section 8.03.

“Prime Rate” means 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 the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Projected Net Revenues” means, for any period the same is to be determined, the Projected Revenues for such period less all Projected Operation and Maintenance Expenses during such period.

“Projected Operation and Maintenance Expenses” means, for any period the same is to be determined, the Operation and Maintenance Expenses included in the Projections for such period.

“Projected Revenues” means, for any period the same is to be determined, the Revenues included in the Projections for such Period.

“Projections” has the meaning assigned to such term in Section 3.01(d).

“Projected” has a correlative meaning.

“Rating Agency” means each of Fitch, Moody’s, and S&P, respectively.

“*Reduction Fee*” has the meaning set forth in the Fee Agreement.

“*Reference Time*” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two Business Days preceding the date of such setting, (2) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Lender in its reasonable discretion.

“*Register*” shall have the meaning assigned to such term in Section 9.06(a).

“*Regulation D*” means Regulation D of the FRB, as in effect from time to time.

“*Regulation U*” means Regulation U of the FRB, as in effect from time to time.

“*Reimbursement Loans*” shall have the meaning assigned to such term in Section 2.03(d).

“*Reimbursement Obligations*” means any and all obligations of the City to reimburse the Lender for draws under Letters of Credit, including all (i) Reimbursement Obligations (Five-Year Expiration Date) and (ii) Reimbursement Obligations (Two-Year Expiration Date).

“*Reimbursement Obligations (Five-Year Expiration Date)*” means any and all obligations of the City to reimburse the Lender for draws under Letters of Credit (Five-Year Expiration Date).

“*Reimbursement Obligations (Two-Year Expiration Date)*” means any and all obligations of the City to reimburse the Lender for draws under Letters of Credit (Two-Year Expiration Date).

“*Related Parties*” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“*Relevant Governmental Body*” means, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

“*Relevant Rate*” means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, Adjusted Daily Simple SOFR, as applicable.

“*Replacement Swap*” has the meaning assigned to it in Section 8.03.

“*Revenues*” means, for any period, all amounts received and accrued by the City for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Community Energy Program during such period, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“*Revolving Credit Exposure*” means, at any time, the sum of the outstanding principal amount of the Loans and the LC Exposure at such time.

“*RFR Borrowing*” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“*RFR Loan*” means a Loan that bears interest at a rate based on Adjusted Daily Simple SOFR.

“*S&P*” means S&P Global Ratings and its successors and assigns.

“*Sanctioned Country*” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, the so - called Donetsk People’s Republic, the so- called Luhansk People’s Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria).

“*Sanctioned Person*” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“*SOFR*” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“*SOFR Administrator*” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*SOFR Determination Date*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*SOFR Rate Day*” has the meaning specified in the definition of “Daily Simple SOFR”.

“*State*” means the State of California.

“*Subordinate Debt*” means any (i) unsecured Debt of the City with respect to the Community Energy Program and payable from, but not secured by pledge of or lien on, Revenues or Net Revenues, the payment of which is subordinate to the payment in full of the City’s payment Obligations under this Agreement and the payment in full of all Parity Debt, pursuant to documentation in form and substance satisfactory to Lender, (ii) unsecured City Working Capital Interfund Loans, [(iii) unsecured City POLR Bridge Interfund Loans,] and **[[~~(iii)~~][(iv)] any other Debt of the City with respect to the Community Energy Program that is payable from, but not secured by pledge of or lien on, Revenues or Net Revenues, pursuant to documentation in form and substance satisfactory to Lender].**⁹ For the avoidance of doubt, Subordinate Debt shall not include: (a) any general obligation bonds of the City, (b) lease obligations of the City entered into connection with lease revenue bonds or lease revenue commercial paper notes issued by the Authority, or (c) any other obligations of the City or the Authority unless such obligations are by their terms expressly payable from or secured by Revenues or Net Revenues.

“*Swap Contract*” means the following transactions of the City with respect to the Community Energy Program and which are expressly payable from Revenues or Net Revenues: (a) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement. For the avoidance of doubt, “Swap Contracts” shall not include commodity swaps or commodity options or Power Purchase Agreements.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and

⁹ **NTD:** Subject to Lender diligence.

termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).¹⁰

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, value added tax or any other goods and services, use or sales tax or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term Benchmark*” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“*Term SOFR Determination Day*” has the meaning specified in the definition of Term SOFR Reference Rate.

“*Term SOFR Rate*” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“*Term SOFR Reference Rate*” means, for any day and time (such day, the “*Term SOFR Determination Day*”), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Lender as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “*Term SOFR Reference Rate*” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“*Termination Fee*” has the meaning set forth in the Fee Agreement.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to

¹⁰ **NTD:** Subject to Lender review.

the Adjusted Term SOFR Rate, the Alternate Base Rate or, to the extent that the Term SOFR Rate is not available hereunder, Adjusted Daily Simple SOFR.

“*UCC*” means the Uniform Commercial Code in effect in the State of California from time to time.

“*UCP*” means Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by the Lender on the date such Letter of Credit is issued.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*United States*” and “*U.S.*” mean the United States of America.

“*Working Capital Availability*” means, as of any date of determination, the Working Capital Sublimit minus the Working Capital Revolving Credit Exposure, in each case as determined on such date.

“*Working Capital Loans*” has the meaning specified in Section 2.01 hereof.

“*Working Capital Revolving Credit Exposure*” means, at any time, the outstanding principal amount of the Working Capital Loans at such time.

“*Working Capital Sublimit*” means, as of the Effective Date, \$50,000,000, subject to the terms and conditions set forth herein and modification from time to time in accordance with Section 2.05(c).

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms as used in this Agreement, the Fee Agreement or the Note refer to this Agreement, the Fee Agreement or the Note as from time to time amended and supplemented. Any reference herein to a particular Section or Article shall, unless otherwise indicated, refer to the appropriate section or article of this Agreement. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, districts, agencies and bodies.

Section 1.02. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP.

Section 1.03. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however,* that with respect to any Letter of Credit that, by its terms

or the terms of any LC Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.04. *Classification of Loans and Borrowings.* For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Term Benchmark Loan” or a “RFR Loan”). Borrowings also may be classified and referred to by Type (e.g., a “Term Benchmark Borrowing” or a “RFR Borrowing”).

ARTICLE II

THE COMMITMENT

Section 2.01. Loans. Subject to the terms and conditions set forth herein, the Lender agrees to make loans to the City from time to time, on any Business Day during the Availability Period; *provided, however,* that (i) after giving effect to any Borrowing, the Revolving Credit Exposure shall not exceed the Commitment, subject to any reductions thereof pursuant to the terms hereof and (ii) Loans made pursuant to this Section 2.01 shall not exceed the Working Capital Sublimit. Subject to the other terms and conditions hereof, the City may borrow under this Section 2.01, prepay under Section 2.04, and reborrow under this Section 2.01. Each Loan shall bear interest as set forth in Section 2.07 hereof. Each Loan extended under the Working Capital Sublimit shall be made solely (i) to pay Costs of Issuance and for working capital and other general operational purposes of the Community Energy Program, including without limitation, the purchase of Power Products and (ii) to make Cash Collateral Loans (each such Loan described in the immediately preceding clauses (i) and (ii), a “*Working Capital Loan*” and collectively, the “*Working Capital Loans*”), in an aggregate amount not to exceed the Working Capital Sublimit during the term of this Agreement. For the avoidance of doubt, proceeds of Loans may not be used for long-term capital expenditures other than long term purchases of Power Products pursuant to Power Purchase Agreements.¹¹

Section 2.02. Borrowings of Loans. (a) Each Borrowing shall be made upon the City’s irrevocable notice to the Lender, which may be given by (A) telephone or (B) a Borrowing Request; *provided* that any telephonic notice must be confirmed immediately by delivery to the Lender of a Borrowing Request. Each such Borrowing Request must be received by the Lender (i) in the case of a Term Benchmark Borrowing, not later than 11:00 a.m. (New York City time) on the third (3rd) Business Day immediately preceding the requested date of any such Borrowing and (ii) in the case of an ABR Borrowing, not later than 11:00 a.m. (New York City time) on the requested date of any such Borrowing (with respect to each such Loan, as applicable, the “*Borrowing Date*”). Each Borrowing shall be in the principal amount of \$100,000 or a whole multiple of \$25,000 in excess thereof. Each Borrowing Request (whether telephonic or written) shall specify the information set forth in *Exhibit B* attached hereto. The Revolving Credit

¹¹ **NTD:** City’s counsel to review and revise as appropriate.

Exposure at any time shall not exceed the Commitment at such time. The Working Capital Revolving Credit Exposure at any time shall not exceed the Working Capital Sublimit.

(b) Following receipt of a Borrowing Request, upon satisfaction of the applicable conditions set forth in Section 3.02 (and, if such Borrowing is the initial Borrowing, Section 3.01), the Lender shall make the requested funds available to the City by wire transfer of such funds to the City's Account.

(c) The obligation of the City to repay the Loans and LC Exposure, together with interest thereon, shall be evidenced by this Agreement, and City hereby declares (i) this Agreement to be a "Credit Facility" within the meaning of Chapter 4.40 of Title 4 of the City's Municipal Code, and (ii) the Lender a "Credit Provider" within the meaning of Chapter 4.40 of Title 4 of the City's Municipal Code.

Section 2.03. Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, the City may request the issuance of Letters of Credit as the applicant thereof under the LC Expiration Date Sublimit (Five-Years) or the LC Expiration Date Sublimit (Two-Years), as applicable, for the support of maintenance and operating requirements to the Community Energy Program, including, but not limited to, Power Purchase Agreement collateral obligations, collateral postings with the California Independent System Operator and the posting of collateral pursuant to the requirements of a Governmental Authority, including the California Public Utilities Commission, in the form of a Letter of Credit Request at any time and from time to time during the Availability Period and prior to the Final Letter of Credit Expiration Date. Subject to the terms and conditions set forth herein, the Lender agrees (A) from time to time on any Business Day during the period from the Effective Date until the Final Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the City, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b) hereof, and (B) to honor drawings under the Letters of Credit; *provided* that after giving effect to any LC Credit Extension with respect to any Letter of Credit, (I) the Revolving Credit Exposure at any time shall not exceed the Commitment at such time, (II) the LC Exposure (Five-Year Sublimit) at any time shall not exceed the LC Expiration Date Sublimit (Five-Years) and (III) the LC Exposure (Two-Year Sublimit) at any time shall not exceed the LC Expiration Date Sublimit (Two-Years). Each request by the City for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the City that the LC Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the City's ability to obtain Letters of Credit shall be fully revolving, and accordingly the City may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Lender shall not be under any obligation to issue any Letter of Credit if:

(A) the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Lender has approved such expiry date in writing;

(B) the expiry date of the requested Letter of Credit would occur after the Final Letter of Credit Expiration Date, unless the Lender has approved such expiry date in writing;

(C) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing the Letter of Credit, or any Law applicable to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Lender in good faith deems material to it;

(D) the issuance of the Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally;

(E) except as otherwise agreed by the Lender, the Letter of Credit is in an initial stated amount less than \$50,000;

(F) the Letter of Credit is to be denominated in a currency other than Dollars;
or

(G) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) The Lender shall be under no obligation to amend any Letter of Credit if (A) the Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(b) *Procedures for Issuance and Amendment of Letters of Credit.* (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the City delivered to the Lender in the form of a Letter of Credit Request, appropriately completed and signed by an Authorized Officer (other than the Director of the Community Energy Program). Such Letter of Credit Request may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the Lender, by personal delivery or by any other means acceptable to the Lender. Such Letter of Credit Request must be received by the Lender not later than 4:00 p.m. (New York City time) at least five (5) Business Days (or such

later date and time as the Lender may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Lender: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Request shall be modified to specify in form and detail satisfactory to the Lender (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Lender may require. Additionally, the City shall furnish to the Lender such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any LC Documents, as the Lender may require.

(ii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Lender will also deliver to the City a true and complete copy of such Letter of Credit or amendment.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) one (1) year from issuance and at or prior to the close of business on the date that is thirty (30) calendar days prior to the Maturity Date.

(d) *Drawings and Reimbursements.* Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the City shall promptly notify the Lender thereof. Not later than 4:00 p.m. (New York City time) on the third (3rd) Business Day after the date of any payment by the Lender under a Letter of Credit (each such date, an “*Honor Date*”), the City shall reimburse the Lender in an amount equal to the amount of such drawing; *provided* that, if such drawing is not less than \$50,000, the City may, subject to the conditions to Borrowing set forth herein, request in accordance with Section 2.02 that such payment be financed with a Borrowing in an equivalent amount and, to the extent so financed, the City’s obligation to make such payment shall be discharged and replaced by the resulting Borrowing (each such Borrowing, a “*Reimbursement Loan*” and collectively, the “*Reimbursement Loans*”). For the date from and including the Honor Date of such drawing to but excluding the earliest of (i) the date that such Reimbursement Obligation is repaid in full, (ii) the third (3rd) Business Day after such Honor Date and (iii) the date on which such Reimbursement Obligation is financed with a Reimbursement Loan pursuant to the foregoing provisions, such Reimbursement Obligation shall bear interest at the Alternate Base Rate plus the Applicable Rate. Interest on Reimbursement Obligations shall be paid when such Reimbursement Obligation is due or otherwise repaid. If a Reimburse Obligation is not either financed with a Reimbursement Loan or repaid, in each case, on or before the third (3rd) Business Day after the Honor Date of such drawing, an Event of Default shall be deemed to have occurred. Any notice given by the Lender pursuant to this Section 2.03(d) may be given by telephone if immediately confirmed in writing;

provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(e) *Obligations Absolute.* The obligation of the City to reimburse the Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Basic Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the City may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Lender or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the Lender of any requirement that exists for the Lender's protection and not the protection of the City or any waiver by the Lender which does not in fact materially prejudice the City;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the City.

The City shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the City's instructions or other irregularity, the City will immediately notify the Lender. The City shall be conclusively deemed to have waived any such claim against the Lender and its correspondents unless such notice is given as aforesaid.

(f) *Role of the Lender.* The Lender and the City agree that, in paying any drawing under a Letter of Credit, the Lender shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The City hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the City's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Lender, any of its Related Parties nor any correspondent, participant or assignee of the Lender shall be liable or responsible for any of the matters described in Section 2.03(d) hereof. In furtherance and not in limitation of the foregoing, the Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Lender shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Lender may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("*SWIFT*") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) *Applicability of ISP and UCP; Limitation of Liability.* Unless otherwise expressly agreed by the Lender and the City when a Letter of Credit is issued the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the Lender shall not be responsible to the City for, and the Lender's rights and remedies against the City shall not be impaired by, any action or inaction of the Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) *Conflict with Other Documents.* In the event of any conflict between the terms hereof and the terms of any L/C Document, the terms hereof shall control.

Section 2.04. Prepayments.

(a) *Optional.* The City may, upon notice to the Lender pursuant to delivery to the Lender of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty subject to Section 8.03; *provided* that, unless otherwise agreed by the Lender (A) such notice must be received by Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to any date of prepayment and (B) any prepayment of Loans shall be in a minimum principal amount of \$1,000,000 or such lesser amount equal to the total outstanding principal amount of such Loan if the total outstanding principal amount thereof is less than \$1,000,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the City, the City shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 8.03.

(b) *Mandatory.*

(i) *Outstandings.* If for any reason at any time (A) the Revolving Credit Exposure at any time exceed the Commitment, (B) the Working Capital Revolving Credit Exposure at any time exceeds the Working Capital Sublimit, (C) the LC Exposure (Five-Year Sublimit) at any time exceeds the LC Expiration Date Sublimit (Five-Years) or (D) the LC Exposure (Two-Year Sublimit) at any time exceeds the LC Expiration Date Sublimit (Two-Years), the City shall, without notice, prepay the applicable Loans (together with all accrued but unpaid interest thereon) and/or cash collateralize the applicable LC Exposure in an aggregate amount equal to such excess; *provided, however*, that the City shall not be required to cash collateralize the LC Exposure pursuant to this Section 2.04(b)(i) unless, after the prepayment of the applicable Loans, (I) the Revolving Credit Exposure exceeds the Commitment at such time, (II) the Working Capital Revolving Credit Exposure exceeds the Working Capital Sublimit at such time, (III) the LC Exposure (Five-Year Sublimit) exceeds the LC Expiration Date Sublimit (Five-Years) at such time or (IV) the LC Exposure (Two-Year Sublimit) exceeds the LC Expiration Date Sublimit (Two-Years) at such time. For the avoidance of doubt, the Minimum Collateral Amount shall not apply to the cash collateral required under this Section 2.04(b)(i) unless an Event of Default has occurred and is continuing.

(ii) *Application of Mandatory Prepayments.* Prepayments made pursuant to this Section 2.04(b), *first*, shall be applied to the outstanding applicable Loans, and, *second*, shall be used to cash collateralize the remaining LC Exposure; and, in the case of prepayments under the Commitment required pursuant to clause (i) of this Section 2.04(b), the amount remaining, if any, after the prepayment in full of all Loans outstanding at such time and the cash collateralization of the remaining LC Exposure in full (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the “*Reduction Amount*”) may be retained by the City for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been cash collateralized, the funds held as cash collateral shall be applied (without any

further action by or notice to or from the City that has provided cash collateral) to reimburse the Lender.

All prepayments under this Section 2.04(b) shall be subject to Section 8.03, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

Section 2.05. Termination or Reduction of Commitment; Extensions of Existing Maturity Date; Reallocation of Working Capital Sublimit .

(a) *Termination or Reduction.* Subject to the provisions of the Fee Agreement, (i) the City may, upon notice to the Lender, terminate the Commitment or from time to time permanently reduce the Commitment; *provided* that (i) any such notice shall be received by the Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) City shall not terminate or reduce the Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Revolving Credit Exposure would exceed the Commitment. Failure by the City to designate in the notice required under clause (i) of this Section 2.05(a) whether the Commitment is to be permanently reduced shall be deemed to be a permanent reduction in the Commitment.

(b) *Extensions of Existing Maturity Date.* (i) The Existing Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.05(b). Upon receipt of written request of the City to extend the Existing Maturity Date, received no more than one hundred eighty (180) days and no less than sixty (60) days prior to the then current Maturity Date (the “*Existing Maturity Date*”), the Lender will use its commercially reasonable efforts to notify the City of its response within thirty (30) days of receipt of the request therefor (the Lender’s decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the City may agree); *provided, however*, that the failure of the City to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Existing Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the City have entered into a written agreement confirming a change in any term of this Agreement.

(ii) As a condition precedent to each such extension of the Existing Maturity Date pursuant to Section 2.05(b)(ii), the City shall deliver to the Lender a certificate of the City dated as of the Existing Maturity Date signed by the Director of the Community Energy Program and at least one other Authorized Officer certifying that, as of such date, both before and immediately after giving effect to such extension, (A) the representations and warranties of the City set forth in this Agreement shall be true and correct and (B) no Potential Event of Default or Event of Default shall have occurred and be continuing.

(c) *Reallocation of Working Capital Sublimit.* The City may, upon written notice to the Lender, reduce the Working Capital Sublimit by allocating an unused portion of the Working Capital Sublimit to increase either or both of the LC Expiration Date Sublimit (Five-Years) and

the LC Expiration Date Sublimit (Two-Years); *provided* that (i) any such notice shall be received by the Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to the date of reallocation, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the City shall not reduce the Working Capital Sublimit if, after giving effect thereto, the Working Capital Revolving Credit Exposure would exceed the Working Capital Sublimit. The City may, upon written notice to the Lender, restore any portion of the Working Capital Sublimit previously reallocated in accordance with the preceding sentence of this Section 2.05(c) *provided* that (i) any such notice shall be received by the Lender not later than 4:00 p.m. (New York City time) five (5) Business Days prior to the date of restoration, (ii) any such partial restoration shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Working Capital Sublimit shall not exceed \$50,000,000 after giving effect thereto, (iv) the LC Exposure (Five-Year Sublimit) shall not exceed the LC Expiration Date Sublimit (Five-Years) after giving effect thereto and (iv) the LC Exposure (Two-Year Sublimit) shall not exceed the LC Expiration Date Sublimit (Two-Years) after giving effect thereto.

Section 2.06. Repayment of Loans. The City hereby unconditionally promises to pay to the Lender on the Maturity Date, the aggregate principal amount of Loans outstanding on such date, together with accrued interest thereon. Subject at all times to Section 2.16 hereof, the City shall repay to the Lender on the Maturity Date all other Obligations payable hereunder.

Section 2.07. Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each RFR Loan shall bear interest at a rate per annum equal to Adjusted Daily Simple SOFR plus the Applicable Rate.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the City hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 3% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of

any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

Section 2.08. Fees. The City agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee, the LC Facility Fee, the Termination Fee and the Reduction Fee. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.09. Computation of Interest and Fees. Interest computed by reference to the Term SOFR Rate or Daily Simple SOFR hereunder shall be computed on the basis of a year of three hundred sixty (360) days, and actual days elapsed. Interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of three hundred sixty-five (365) days (or three hundred sixty-six (366) days in a leap year), and actual days elapsed. In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan (or Reimbursement Obligation, if applicable) shall be computed on a daily basis based upon the outstanding principal amount of such Loan (or Reimbursement Obligation, if applicable) as of the applicable date of determination, *provided* that any Loan (or Reimbursement Obligation, if applicable) that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day. The applicable Alternate Base Rate, Adjusted Term SOFR Rate, Term SOFR Rate, Adjusted Daily Simple SOFR or Daily Simple SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

All computations of fees shall be made on the basis of a year of three hundred sixty (360) days, and actual days elapsed. Interest shall accrue on each Loan (including any Reimbursement Obligation of an LC Exposure) for the day on which such Loan is made (or, in the case of Reimbursement Obligations, the day on which a related drawing is not reimbursed), and shall not accrue for the day on which the Loan or such portion is paid, *provided* that any Loan (or Reimbursement Obligation, if applicable) that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.10. Evidence of Debt. The Borrowings made from the Lender shall be evidenced by one or more accounts or records maintained by the Lender in the ordinary course of business. The accounts or records maintained by the Lender shall be conclusive absent manifest error of the amount of the Borrowings made from the Lender by the City and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the City hereunder to pay any amount owing with respect to the Obligations. The Loans shall be evidenced by the Note to be issued on the Effective Date, initially registered in the name of, and payable to, the Lender and otherwise duly completed. The Lender may attach schedules to the Note and endorse thereon the date, amount and maturity of Loans and payments with respect thereto.

Section 2.11. Payments. (a) All payments to be made by the City under this Agreement or under the Fee Agreement shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. If any payment to be made by the City shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. All payments hereunder to the Lender shall be made by wire transfer to the Lender at its offices at 383 Madison Avenue, New York, New York, or as otherwise set forth in the invoice from the Lender for such payment.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, Reimbursement Obligations, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and Reimbursement Obligations then due hereunder.

Section 2.12. Maximum Interest Rate. Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Interest Rate. If for any interest period the applicable interest rate would exceed the Maximum Interest Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Interest Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Interest Rate, any Obligation hereunder will bear interest at the Maximum Interest Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by applicable law, the City shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.12 that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

Section 2.13. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the City may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The City may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the City shall notify the Lender of such election by the time that a Borrowing Request would be required under Section 2.02 if the City were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and shall be signed by an Authorized Officer (other than the Director of the Community Energy Program).

(c) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing or, if a Term Benchmark Borrowing is not available hereunder, a RFR Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “*Interest Period*”.

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the City shall be deemed to have selected an Interest Period of one month’s duration.

(d) If the City fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be deemed to have an Interest Period that is one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the City, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, (A) each Term Benchmark Borrowing and (B) each RFR Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.14. Alternate Rate of Interest; Illegality. (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 2.14, if:

(i) the Lender determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Lender determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans (or its Loan) included in such Borrowing;

then the Lender shall give notice thereof to the City by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Lender notifies the City that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the City delivers a new Interest Election Request in accordance with the terms of Section 2.13 or a new Borrowing Request in accordance with the terms of Section 2.02(a), (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (A) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (B) an ABR Borrowing if Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, and (2) any Borrowing Request that requests a RFR Borrowing shall instead be deemed to be a Borrowing Request for an ABR Borrowing; *provided* that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the City's receipt of the notice from the Lender referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Lender notifies the City that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the City delivers a new Interest Election Request in accordance with the terms of Section 2.13 or a new Borrowing Request in accordance with the terms of Section 2.02(a), (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Lender to, and shall constitute, (x) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Lender to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Basic Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such

Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date the Lender and the City reach agreement in writing on such replacement Benchmark without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document.

(c) Notwithstanding anything to the contrary herein or in any other Basic Document, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(d) The Lender will promptly notify the City of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.14.

(e) Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will no longer be representative, then the Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (C) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (D) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the City’s receipt of notice of the commencement of a Benchmark Unavailability Period, the City may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the City

will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the City's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Lender to, and shall constitute, (x) a RFR Borrowing so long as Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Lender to, and shall constitute an ABR Loan.

Section 2.15. Cash Collateral. (a) If (i) as of any Letter of Credit Expiration Date, any related LC Exposure for any reason remains outstanding and is not refinanced with a Reimbursement Loan or (ii) any Event of Default shall occur and be continuing, on the Business Day that the City receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the City shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon (such amount, the "*Minimum Collateral Amount*"); *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the City described in Section 7.01(f) hereof.

(b) The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the City hereby grants the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option of the Lender with the City's consent such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for Reimbursement Obligations, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the Reimbursement Obligations of the City for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the City is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned promptly to the City, but in no event later than within three (3) Business Days, after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

Section 2.16. Payment and Security for Obligations. (a) The Net Revenues shall be and hereby are pledged by the City to the payment of the Obligations on a first-priority basis. The Obligations of the City under this Agreement, the Fee Agreement and the other Basic Documents are limited obligations, payable solely from, and secured by a first-priority pledge of and lien on, Net Revenues. The pledge of the Net Revenues herein made is irrevocable until the Commitment has expired or been terminated in accordance with the terms hereof and all Obligations hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all payments made by the Lender pursuant to a Letter of Credit shall have been reimbursed. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt. There shall be no pledge of or Lien on Net Revenues that ranks senior to the Obligations. For the avoidance of doubt, under no circumstances shall the Obligations of the City under this Agreement, the Fee Agreement or any other Basic Document be required to be paid from, or secured by, any revenues, funds, accounts or properties of the City (including, without limitation, the General Fund of the City) other than the Net Revenues as provided in this Section 2.16.

(b) The pledge created pursuant to paragraph (b) of this Section 2.16 is created in accordance with and pursuant to the provisions of Title 4 of the City's Municipal Code.

ARTICLE III

CONDITIONS PRECEDENT TO BORROWINGS

Section 3.01. Conditions to Initial Borrowing; Authority; Enforceability. This Agreement shall become binding on the parties hereto upon the satisfaction of the following conditions precedent (all Basic Documents and other documents to be delivered to the Lender pursuant to this Section 3.01 shall be subject to prior approval as to form and substance by the Lender, with delivery by the Lender of its signature page to this Agreement evidencing the Lender's acknowledgement that the conditions set forth in this Section 3.01 have been satisfied, unless otherwise waived in writing):

(a) *Documents.* The Lender has received executed copies of the Basic Documents executed by the City on the Effective Date.

(b) *Opinions.* The Lender has received from the City's legal counsel an opinion, addressed to the Lender and dated as of the Effective Date, as to the due authorization, execution and delivery of this Agreement and the other Basic Documents, and as to the validity and enforceability with respect to the City of this Agreement and the other Basic Documents, the pledge of Net Revenues securing the Obligations constituting a valid pledge, and such other matters as the Lender may reasonably request, in form and substance satisfactory to the Lender and its counsel.

(c) *Certificate.* The Lender has received (i) certified copies of the Ordinances and all resolutions of the City authorizing the execution, delivery and performance of the

Basic Documents and the transactions contemplated thereby, (ii) a certificate or certificates of the Director of the Community Energy Program and at least one other Authorized Officer dated the Effective Date certifying the accuracy of City's representations and warranties contained in Article IV hereof is true and correct on and as of the date of such certificate and that no Potential Event of Default or Event of Default has occurred and is continuing, and (iii) and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement, the Note and the other documents or certificates to be delivered by the City pursuant hereto or thereto, and that the conditions precedent set forth in this Section 3.01 have been satisfied;

(d) *Financial Statements and Projections.* The Lender has received (i) the audited financial statements of the Community Energy Program for the Fiscal Year ended June 30, 2022, and all subsequent unaudited quarterly statements of the Community Energy Program prepared prior to the Effective Date, (ii) the adopted operating budget of the Community Energy Program for the fiscal year ending June 30, 2023, and (iii) a copy of the projected income statement of the Community Energy Program (including Projected Revenues and Projected Operation and Maintenance Expenses) for the fiscal years ending on June 30 of the years 2023 through 2026, inclusive (as the same may be revised and to the extent such revisions are approved in the sole but reasonable discretion of the Lender from time to time pursuant to Section 5.01(f), the "*Projections*"), in form and substance reasonably satisfactory to the Lender.

(e) *Barclays Obligations.* The Lender has received evidence reasonably satisfactory to it that all Barclays Obligations have been paid in full in immediately available funds (or, in the case of any outstanding letters of credit cash collateralized to the reasonable satisfaction of the Lender) on or before the Effective Date, and such Barclays Obligations (other than those cash collateralized to the reasonable satisfaction of the Lender) and the documents thereto shall be terminated to the satisfaction of the Lender.

(f) *Other Matters.* The Lender has received such other opinions, certificates and documents it may reasonably request relating to the existence of the City, the authority for and the validity of this Agreement and each of the other Basic Documents, and any other matters relevant hereto or thereto, all in form and substance satisfactory to the Lender.

Section 3.02. Conditions to All Credit Extensions. The obligation of the Lender to honor any request for a Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the City set forth in Article IV (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, in each case, except to the extent that such

representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Potential Event of Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Lender shall have received a Borrowing Request or Letter of Credit Request, as applicable, in accordance with the terms, conditions and requirements hereof.

Each Borrowing Request, application for any Letter of Credit and application for amendment to a Letter of Credit submitted by the City shall be deemed to be a representation and warranty that the conditions specified in Sections 3.02(a) and (b) hereof have been satisfied on and as of the date of the applicable Borrowing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE CITY

City hereby represents and warrants as follows:

Section 4.01. Organization, Powers, Etc. The City (a) is a political subdivision of the State validly organized and existing under and by virtue of the laws of the State and (b) has full power and authority to execute (or adopt, as the case may be), deliver and perform its obligations under this Agreement and the other Basic Documents and to borrow hereunder. The Community Energy Program is an “Electric Service Provider” under the Community Energy Aggregation Act and has the full power and authority to offer electrical service to customers within its service territory. Except for all permits, licenses and approvals for the operation of the Community Energy Program yet to be obtained, the City is qualified to operate the Community Energy Program in each jurisdiction in which the nature of the business conducted by it makes such qualification necessary and has full power and authority to own its properties and carry on its business as now conducted. The City has duly adopted the Ordinances, and the Ordinances together with the relevant provisions of the City’s Municipal Code affected thereby remain in full force and effect on the Effective Date.

Section 4.02. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance of this Agreement and the other Basic Documents and the making of the Borrowings and the issuance of Letters of Credit as contemplated hereunder (a) have been duly authorized by the City, (b) do not and will not conflict with, or result in a violation of, any provision of law, including the Community Energy Aggregation Act, the City’s Municipal Code or any order, rule or regulation of any court or Governmental Authority and (c) do not and will not conflict with, result in a violation of or constitute a default under, the Community Energy Aggregation Act and the City’s Municipal Code, or any other ordinance, resolution, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

Section 4.03. Governmental Consent or Approval. The execution, delivery and performance of this Agreement and the other Basic Documents and the making of the Borrowings contemplated hereunder do not and will not require registration with, or the consent or approval of, or any other action by, any Governmental Authority other than those which have been made or given and are in full force and effect.

Section 4.04. Binding Obligation. This Agreement and the other Basic Documents are legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms except as enforcement thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and subject to equitable principles in the event that equitable remedies are sought.

Section 4.05. Absence of Material Litigation. Except as disclosed in writing to the Lender prior to the Effective Date, there is no action or investigation pending with service of process accomplished against the City or, to the knowledge of the City Attorney or City Manager, threatened in writing against the City or the Community Energy Program before any court, administrative agency or arbitrator which (i) in the reasonable opinion of the City Attorney is with merit and if determined adversely would have a Material Adverse Effect or (ii) relates to the execution, delivery, validity, enforceability or performance by the City of any Basic Document or the validity of the Ordinances.

Section 4.06. Financial Condition. The audited financial statements of the Community Energy Program for the Fiscal Year ended June 30, 2022, and the most recent unaudited quarterly statements of the Community Energy Program delivered by the City to the Lender since that day, have been prepared in conformity with GAAP (except as noted therein), and fairly present, in all material respects, the financial condition of the Community Energy Program, as of the dates thereof. Since the date of the audited financial statements or unaudited quarterly statements of the Community Energy Program, whichever was most recently furnished to the Lender, there has been no Material Adverse Change in the operations, assets, liability or financial condition of the Community Energy Program.

Section 4.07. Amendments. None of the Basic Documents have been amended except by such amendments or supplements as have been delivered to the Lender prior to the execution of this Agreement. The Ordinances have not been amended, supplemented, modified, rescinded or repealed and remain in full force and effect as of the date hereof.

Section 4.08. Liens. This Agreement creates a valid first-priority Lien on and pledge of Net Revenues to secure the payment and performance of the City's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the City, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

Section 4.09. No Defaults. (a) No Potential Event of Default or Event of Default has occurred and is continuing.

(b) No “default” or “event of default” (after giving effect to applicable cure periods, if any) has occurred and is continuing with respect to the City under any other material mortgage, indenture, contract, agreement or undertaking respecting the Community Energy Program (including, but not limited to, any Power Purchase Agreements with a notional amount or amounts, in the aggregate, of \$25,000,000) to which the City is a party or which purports to be binding on the City or on any of the property of the City respecting the Community Energy Program.

Section 4.10. No Proposed Legal Changes. Except as disclosed in writing to the Lender prior to the Effective Date, there is no (i) amendment, or to the best knowledge of the City, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, or (ii) ordinance of the City or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed the City Council, or any published judicial decision interpreting any of the foregoing, in each case, the effect of which could reasonably be expected to adversely affect the validity, enforceability, security for, or priority of payment of the Obligations or the ability of the City to perform its obligations under this Agreement or the other Basic Documents to which the City is a party.

Section 4.11. Compliance. The City is in substantial compliance with all laws, ordinances, orders, rules and regulations applicable to it, except to the extent noncompliance could not reasonably be expected to have a Material Adverse Effect.

Section 4.12. Environmental Laws. The City has not received notice to the effect that its operations with respect to the Community Energy Program are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

Section 4.13. Margin Stock. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. ERISA. The City does not maintain or contribute to, and has not maintained or contributed to, any “employee benefit plans” that are subject to Title IV of ERISA.

Section 4.15. Incorporation of Representations and Warranties by Reference. The City hereby makes to the Lender the same representations and warranties as are set forth by it in each Basic Document (other than this Agreement and the Fee Agreement) to which it is a party, which representations and warranties, together with the related defined terms contained therein, are hereby incorporated herein by reference for the benefit of the Lender with the same effect as if

each and every such representation and warranty and defined term were set forth herein in its entirety and were made as of the date hereof. No amendment to such representations and warranties or defined terms made pursuant to any Basic Document (other than this Agreement and the Fee Agreement) shall be effective to amend such representations and warranties and defined terms as incorporated by this reference without the prior written consent of the Lender.

Section 4.16. Immunity. The City is not entitled to raise the defense of immunity (whether sovereign, governmental or otherwise) in connection with any legal proceedings to enforce or collect upon the obligations of the City under this Agreement or the transactions contemplated hereby, including, without limitation, the payment of the Obligations; *provided, however,* that the procedural requirements applicable to commencing an action and exercising remedies against the City differ from those provisions and requirements applicable to individuals and non-governmental entities.

Section 4.17. Anti-Terrorism Laws. The City is not in violation of any Laws relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Patriot Act.

The City is not any of the following:

- (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a Person with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
- (v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“*OFAC*”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list.

Section 4.18. Existing Parity Debt and Subordinate Debt. As of the Effective Date, the City has (i) no Debt secured by Net Revenues on a parity with this Agreement, and (ii) no Subordinate Debt other than City Working Capital Interfund Loans in the outstanding principal amount of \$[95,000,000] [and City POLR Bridge Interfund Loans in the outstanding principal amount of \$_____].

Section 4.19. No Existing Right to Accelerate. No Person, including, without limitation, any credit facility provider or liquidity provider, either of which provides credit enhancement or liquidity support to any Debt of the City that is secured by or payable from Net Revenues, or any holder of Debt of the City that is secured by or payable from Net Revenues, has a right under any resolution, indenture, or supplemental indenture relating to any such Debt of the City or under any other document or agreement relating to any Debt of the City, to cause an acceleration of such Debt, or to otherwise declare the principal of and interest on any such Debt to be immediately due and payable, prior to its maturity.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE CITY

City agrees that, so long as the Lender has any Commitment hereunder or any amount payable hereunder remains unpaid:

Section 5.01. Reports, Certificates and Other Information.

(a) *Notice of Default.* Promptly upon any Authorized Officer obtaining knowledge of the occurrence of a Potential Event of Default or Event of Default or notice thereof, and in any event within three (3) Business Days thereafter, the City will provide to the Lender the written statement of an Authorized Officer setting forth in reasonable detail the nature of such event and the action which the City proposes to take with respect thereto;

(b) *Annual Reports.* Within two hundred seventy (270) days after the end of each Fiscal Year of the City, the City will deliver to the Lender financial statements (which delivery shall be deemed to have occurred upon such financial statements becoming available at <http://www.sanjosecleanenergy.org/> and notice of such posting having been provided to the Lender) consisting of a statement of net position of the Community Energy Program as at the end of such Fiscal Year and a statement of revenues and expenses and a statement of cash flows of the Community Energy Program for such Fiscal Year, together with all in reasonable detail and accompanied by an unqualified opinion of a nationally recognized independent certified public accounting firm stating that such financial statements have been prepared in accordance with GAAP consistently applied;

(c) *Quarterly Reports.* Within sixty (60) days after the end of each fiscal quarter of the City, the City will deliver to the (i) Lender financial statements (which delivery shall be deemed to have occurred upon such financial statements becoming available at <http://www.sanjosecleanenergy.org/> and notice of such posting having been provided to the Lender) consisting of a statement of net position of the Community Energy Program as at the end of such fiscal quarter and a statement of revenues and expenses and a statement of cash flows of the Community Energy Program for such fiscal quarter, (ii) the aggregate principal amount of outstanding Debt payable by the Commercial Energy Program to the City or the Authority, if any, as of such date and (iii) statistics on number of consumers enrolled in Community Energy and energy-usage statistics therefor;

Each of the financial statements furnished to the Lender pursuant to subsections (a) and (b) of this Section 5.01 shall be accompanied by a certificate signed by the Director of the Community Energy Program and at least one other Authorized Officer addressed to the Lender, substantially in the form of *Exhibit E* hereto, (x) stating that no Event of Default or Potential Event of Default has occurred, or if any Event of Default or Potential Event of Default has occurred, specifying the nature of such Event of Default or Potential Event of Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Potential Event of Default and (y) demonstrating compliance with the Debt Service Coverage Ratio required by Section 5.11 hereof;

(d) *Additional Notices.* (i) As soon as possible after an Authorized Officer acquires knowledge of the occurrence thereof, the City will notify the Lender of the filing of a complaint by or before any court or administrative agency against the City relating to the Community Energy Program with service of process properly completed under applicable law, which, if adversely determined, in the reasonable judgment of the City, is reasonably likely to have a Material Adverse Effect; and

(ii) promptly after incurrence or issuance thereof by the City, copies of each agreement in respect of Parity Debt;

(e) *Power Purchase Agreement Defaults.* Promptly upon any Authorized Officer obtaining knowledge of the occurrence of (i) an event of default or notice thereof or (ii) any condition or event which, with the giving of notice or lapse of time, or both, would, unless cured or waived, become an event of default thereunder, in each case, caused by the City under any one (1) or more Power Purchase Agreements with a notional amount or amounts, in the aggregate, of \$20,000,000 or more concurrently outstanding, and in any event within five (5) days thereafter, the City will provide to the Lender the written statement of an Authorized Officer setting forth the reasonable detail of such event and the action which the City proposes to take with respect thereto;

(f) *Projections.* As soon as available, but in any event no later than sixty (60) days after the end of each fiscal year, a copy of the City's Projections as of June 30 of the immediately following three fiscal years, which update shall be in form and substance reasonably satisfactory to the Lender; and

(g) *Other Information.* The City will provide to the Lender such other information respecting the business, affairs, financial condition or operations of the City, as the Lender may from time to time reasonably request.

Section 5.02. Inspections; Discussion. At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the City shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the City respecting the operations of the Community Energy Program, to examine the books of account of the City respecting the operations of the Community Energy Program (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the City respecting the operations

of the Community Energy Program with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request; *provided, however*, that if required by the City, the Lender shall, as a condition to being permitted by the City to make or conduct any such visit, inspection, examination or discussion, certify to the City that the same is being made or conducted solely in order to assist the Lender in evaluating its Commitment. The Lender agrees that all information obtained by it as a result of any such visit, inspection, examination or discussion is confidential and shall not be made public or divulged to third parties, except with the prior written consent of the City or as compelled by law.

Section 5.03. Preservation of Pledge. The City will take any and all actions necessary or reasonably requested by the Lender to maintain the pledge of Net Revenues and the priority thereof set forth in this Agreement.

Section 5.04. Taxes and Liabilities. The City will pay all its indebtedness and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, except those indebtedness, obligations, taxes, assessments or governmental charges or levies which the City shall in good faith contest by proper legal proceedings if the City shall in all such cases have set aside on its books adequate (in City's sole discretion) reserves with respect thereto.

Section 5.05. Ratings. The City will at all times maintain at least one long-term, unenhanced rating on its general-obligation bonded indebtedness by any of Moody's or S&P.

Section 5.06. Compliance with Basic Documents; Operation and Maintenance of Community Energy Program. (a) The City shall perform and comply with covenant set forth in each of the Basic Documents (other than this Agreement) and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third-party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.06(a) with the same effect as if it were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Lender and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Lender. The City will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender.

(b) The City will enter into, perform and maintain such contractual relationships and Power Purchase Agreements as are necessary for the City to provide Power Products and such

other services and resources as are necessary for the operation of the Community Energy Program.

Section 5.07. Disclosure to Participants. The City shall permit the Lender to disclose any information received by the Lender in connection herewith including, without limitation, the financial information described in Section 5.01 hereof, to any participant or assignee as described in Section 9.05 hereof.

Section 5.08. Further Assurances. From time to time hereafter, the City will execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Lender may reasonably request, for the purposes of implementing or effectuating the provisions of the Basic Documents and this Agreement or for the purpose of more fully perfecting or renewing the rights of the Lender with respect to the rights, properties or assets subject to such documents (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the City which may be deemed to be a part thereof).

Section 5.09. Existence, Etc. City will maintain its existence and the existence of the Community Energy Program. The City will preserve and keep in force and effect all licenses, permits, franchises and qualifications necessary to the proper conduct of its operations and the operations of the Community Energy Program. The City will not amend any organizational document or any agreement directly or indirectly governing the operations or management of the Community Energy Program in a manner that could reasonably be expected to result in a Material Adverse Effect.

Section 5.10. No Different or More Restrictive Terms. The City shall not, directly or indirectly, enter into or otherwise consent to any Other Credit Agreement, which such Other Credit Agreement provides the counterparty thereto with additional or more restrictive events of default or greater rights and remedies than are provided to the Lender in this Agreement without the prior written consent of the Lender.

Section 5.11. Debt Service Coverage Ratio. The Debt Service Coverage Ratio shall be not less than 1.10 to 1.00 as of the last day of the fiscal quarter most recently ended, commencing with the last fiscal quarter ended [March 31, 2023]¹²; *provided, however*, in the event the Debt Service Coverage Ratio for any fiscal quarter is less than 1.10 to 1.00 but the Days Liquidity on Hand for such fiscal quarter equals or exceeds 90 days (or, 75 days, so long as the long-term unenhanced rating by at least one Rating Agency on Debt secured by Net Revenues shall be at or above “Baa3” (or its equivalent) with respect to Moody’s, “BBB-” (or its equivalent) with respect to S&P or “BBB-” (or its equivalent) with respect to Fitch, respectively) then the City shall be deemed to be in compliance with this Section 5.11 for such period (the “Liquidity Cure Right”); *provided, further*, that in no event shall the City be permitted to exercise Liquidity Cure Rights hereunder more than three (3) times during any four (4) consecutive fiscal quarter period.

¹² **NTD:** To be the last day of the first fiscal quarter ending after the Effective Date.

The City shall determine the Debt Service Coverage Ratio and the Days Liquidity on Hand at each fiscal quarter end and shall provide the Lender with written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than sixty (60) calendar days following the end of each fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

Section 5.12. Maintenance of Insurance. The City shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties used by the City in connection with the operations of the Community Energy Program with responsible and reputable insurance companies; *provided, however,* that the City may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include property, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the City. Under no circumstances shall such property insurance be required to include flood and earthquake insurance unless such insurance is available at reasonable cost from reputable insurers in the judgment of the City. The City shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The City shall also procure and maintain at all times adequate crime insurance or fidelity bond on all officers and employees handling or responsible for any Revenues or funds of the Community Energy Program, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million Dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the Community Energy Program

Section 5.13. Accuracy of Information. The City will ensure that any information, including financial statements or other documents, furnished to the Lender in connection with this Agreement or any other Basic Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder are complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof and do not contain any untrue statement of a material fact, and the furnishing of such information shall be deemed to be a representation and warranty by the City on the date thereof as to the matters specified in this Section 5.13; *provided that,* with respect to the Projections, the City will cause the Projections to be prepared in good faith based upon assumptions believed by the City to be reasonable at the time.

ARTICLE VI

NEGATIVE COVENANTS OF THE CITY

City agrees that, so long as the Commitment is outstanding hereunder or any amount payable hereunder remains unpaid, it will not:

Section 6.01. Compliance with Laws, Etc. Violate any Laws, rules, regulations, or governmental orders to which it is subject, which violation involves a reasonable likelihood of having a Material Adverse Effect.

Section 6.02. Additional Debt. (a) Issue, incur or assume to exist any Debt other than (i) Parity Debt described in clause (b) below and (ii) Subordinate Debt described in clause (c) below;

(b) Issue, incur or assume to exist any Parity Debt except for (i) the Obligations, and (ii) other Parity Debt issued or incurred with the City's concurrent delivery to the Lender of a written certificate, appropriately completed and signed by the Director of the Community Energy Program and at least one other Authorized Officer, in form and substance satisfactory to the Lender, and including the following:

(1) certifying that (A) no Potential Event of Default or Event of Default has occurred and is continuing immediately before and after the issuance or incurrence of such Parity Debt and (B) such Parity Debt does not exceed at any time any limitation set forth in (I) any provision of law, including the Community Energy Aggregation Act, the City's Municipal Code or any order, rule or regulation of any court or Governmental Authority or (II) any other ordinance, resolution, agreement or instrument to which the City is a party or by which the City or any of its property is bound, and

(2) (A) setting forth estimated Net Revenues (in reasonable detail and with reasonable assumptions) for the period during which such other Parity Debt will be outstanding, (B) setting forth projected Annual Debt Service (in reasonable detail and with assumptions believed by the City to be reasonable) for the next twelve-month period and (C) demonstrating that Projected Net Revenues for the period during which such other Parity Debt will be outstanding is at least equal to 1.30 times the projected Annual Debt Service for such period; and

(c) Issue, incur or assume to exist any Subordinate Debt except for: (A) [City Working Capital Interfund Loans]¹³ and (B) any other Subordinate Debt issued or incurred with the City's concurrent delivery to the Lender of evidence reasonably satisfactory to the Lender that such Subordinate Debt has been subordinated to the Obligations on terms satisfactory to the Lender and a written certificate of the City, appropriately completed and signed by the Director of the Community Energy Program and at least one other Authorized Officer, in form and substance satisfactory to the Lender, and certifying that (I) no Potential Event of Default or Event of Default has occurred and is continuing immediately before and after the issuance or incurrence of such Subordinate Debt, and (II) such Subordinate Debt does not exceed at any time any limitation set forth in (x) any provision of law, including the Community Energy Aggregation Act, the City's Municipal Code or any order, rule or regulation of any court or Governmental Authority or (y) any other ordinance, resolution, agreement or instrument to which the City is a party or by which the City or any of its property is bound.

¹³ **NTD:** Subject to Lender diligence.

Section 6.03. Swap Contracts. Not enter into any Swap Contract without prior approval from the Lender, except (a) Swap Contracts entered into to hedge or mitigate risks to which the City has actual exposure, and (b) Swap Contracts entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the City, and, in each case, the payments under which are not secured by any Lien on any portion of the Net Revenues securing any termination payment pursuant to any Swap Contract to be *pari passu* or senior to the Lien on the Net Revenues securing the payment of Obligations hereunder or under the Fee Agreement, *provided, however*, that it is understood that Power Purchase Agreements are regularly entered into to hedge against pricing and supply risks in connection with energy requirements and Power Products.

Section 6.04. Amendments. Except as expressly consented to in writing by the Lender, (i) agree to the amendment of any document such that the security for or payments hereunder are materially impaired or reduced or the security for or priority of the Obligations is materially adversely affected; or agree to any amendment of any document which will materially adversely affect City's ability to pay any of the Obligations hereunder or the security for the Obligations hereunder or the rights or obligations of the Lender in respect thereof; or (ii) amend the City's Municipal Code, by ordinance or any other way, in any way which would have a Material Adverse Effect.

Section 6.05. Waiver of Immunity. Assert or claim the defense of immunity (whether sovereign, governmental or otherwise) in connection with any legal proceedings to enforce or collect upon the obligations of the City under this Agreement or the transactions contemplated hereby or thereby, including, without limitation, the payment of the Obligations; *provided, however*, that the procedural requirements applicable to commencing an action and exercising remedies against the City differ from those provisions and requirements applicable to individuals and non-governmental entities.

Section 6.06. Offering Documents. Refer to the Lender in any offering document or make any changes in reference to the Lender in any official statement, offering memorandum, private placement memorandum or any similar offering document (or any amendment or supplement to an official statement, offering memorandum, private placement memorandum or any similar offering document) or make any changes in reference to any financial information or ratings with respect to the Lender in any official statement, offering memorandum, private placement memorandum or any similar offering document (or any amendment or supplement to an official statement, offering memorandum, private placement memorandum or any similar offering document) without the prior written consent of the Lender; *provided, however*, that that the City shall be permitted to reference the Lender and the terms and conditions of this Agreement and the other Basic Documents in any such offering document if (i) required to be so referenced in the financial statements, including the notes thereto, of the City under GAAP, and such financial statements are included, either expressly or by reference, in any such offering document or (ii) reference thereof is required pursuant to the requirements of applicable federal securities laws, including, without limitation, Securities and Exchange Commission Rule 10b-5.

Section 6.07. Liens on Revenues. Create, suffer to exist or permit any Lien on the Net Revenues other than (i) Liens created by this Agreement, and (ii) permitted by any agreement or instrument evidencing Parity Debt or Subordinate Debt issued or incurred in accordance with the terms of this Agreement.

Section 6.08. Use of Proceeds. (a) Use the proceeds of any Loan for any purposes other than the purposes set forth in Section 2.01. Use the Letters of Credit for any purpose other than the uses set forth in Section 2.03(a). Use any portion of the proceeds of a Loan for the purpose of carrying or purchasing any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) nor incur any Debt which is to be reduced, retired or purchased by the City out of such proceeds. For the avoidance of doubt, proceeds of Loans may not be used for long-term capital expenditures other than long term purchases of Power Products pursuant to Power Purchase Agreements.

(b) The City will not request any Borrowing or Letter of Credit, and the City shall not use, and shall procure that its directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Terrorism Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 6.09. Available Net Revenues. Use Net Revenues for any purpose other than: (i) payment of Operation and Maintenance Expenses; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt permitted hereunder; (iv) payment of debt service on, and fees associated with, (A) Subordinate Debt permitted hereunder (other than City Working Capital Interfund Loans [and City POLR Bridge Loans]) so long as no Event of Default has occurred and is continuing, (B) City Working Capital Interfund Loans so long as (I) no Event of Default has occurred and is continuing and (II) on or prior to the date of any payment made pursuant to this clause (B), the Lender shall have received evidence reasonably satisfactory to it that, as of the last day of each of the then current fiscal quarter and the immediately following fiscal quarter, after giving pro forma effect to any such payment, the aggregate amount of Cash and Cash Equivalents in the [Clean Energy Fund] is projected to equal or exceed \$50,000,000 [and (C) City POLR Bridge Loans then outstanding so long as (I) no Event of Default has occurred and is continuing and (II) on or prior to the date of any payment made pursuant to this clause (C), the Lender shall have received evidence reasonably satisfactory to it that the portion of cash collateral posted to another Person (pursuant to the requirements of a Governmental Authority (including California Public Utilities Commission), including the collateral requirements of the California Public Utilities Commission with respect to providers of last resort) using the portion of the proceeds of the POLOR Bridge Loans being so repaid has been released and remitted back to the City]; (v) capital expenditures in connection with assets that will become part of the Community Energy Program; **[(vi) rebates to Community Energy Program customers]**; and (vii) any other lawful purpose that inures to the direct benefit of the Community Energy Program.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any of the following events shall be an “*Event of Default*” hereunder, unless waived in writing by Lender:

(a) City shall (i) fail to pay the principal of, or interest on, any Loan or any Reimbursement Obligation or deposit any funds as cash collateral in respect of LC Exposure when the same shall become due and payable in accordance with its terms or (ii) fail to pay any other amount due and owing hereunder or under the Fee Agreement within three (3) Business Days of when due;

(b) Any representation, warranty, certification or statement made by the City in this Agreement or in any other Basic Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Basic Document shall (in any such case) have been incorrect or untrue in any materially adverse respect when made or deemed to have been made;

(c) City shall default in the due performance or observance of any term, covenant or agreement contained in Sections 5.01(a), 5.01(b), 5.01(c), 5.01(d), 5.01(e) 5.03, 5.06 (after giving effect to any grace period contained in such document), 5.11, 5.12 or Article VI hereof;

(d) City shall default in the due performance or observance of any term, covenant or agreement contained herein other than those set forth in clause (a) or (c) of this Section 7.01 and such default, if capable of being remedied, shall remain unremedied for thirty (30) days after the earlier of (i) written notice thereof shall have been given to the City by the Lender or (ii) the date on which the Director of the Community Energy Program or the Director of Finance of the City, or, in each case, any other Person acting in such capacity or as deputy thereto, first becomes aware of such default;

(e) any material provision of this Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the City as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the City, or the City publicly contests the validity or enforceability of any obligation to pay Debt of the City, or the City repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, any other Basic Document or any operative document related to Debt of the City;

(f) (i) City shall admit in writing its inability to pay its debts generally as they become due, or shall become insolvent within the meaning of Section 101(32) of the United States Bankruptcy Code; or (ii) either City or a governmental authority of

competent jurisdiction shall declare a moratorium on the payment of the City's Debts or apply for, consent to or acquiesce in the appointment of a trustee, custodian, liquidator or receiver for City or any substantial part of its property, or shall take any action to authorize or effect any of the foregoing; or (iii) in the absence of any such application, consent or acquiescence, a trustee, custodian, liquidator or receiver shall be appointed for City or for a substantial part of its property or revenues and shall not be discharged within a period of sixty (60) days; or (iv) any governmental authority having jurisdiction over City shall make a finding or ruling or shall enact or adopt legislation or issue an executive order or enter a judgment or decree which results in a debt moratorium, debt restructuring, or comparable extraordinary restriction on repayment when due and payable of the principal of or interest on the debts of the City; or (v) any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding shall be instituted by or against the City (or any action shall be taken to authorize or effect the institution by it of any of the foregoing) and if instituted against it, shall be consented to or acquiesced in by it, or shall not be dismissed within a period of sixty (60) days or an order for relief shall be granted;

(g) City shall default in the due performance or observance of any material term, covenant or agreement contained in any other Basic Document and the same shall not have been cured within any applicable cure period;

(h) City (i) defaults on the payment of the principal of or interest on any Parity Debt or Subordinate Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Parity Debt or Subordinate Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Parity Debt or Subordinate Debt, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Parity Debt or Subordinate Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Parity Debt or Subordinate Debt;

(i) One or more final, non-appealable judgments or orders for the payment of money in an aggregate amount in excess of \$10,000,000 shall be rendered or filed against the City with respect to the Community Energy Program and payable from Revenues or Net Revenues and such judgment or order shall continue unsatisfied and unstayed for a period of sixty (60) days;

(j) The long-term unenhanced ratings by any Rating Agency on any general-obligation bonded indebtedness of the City shall be withdrawn or suspended (but excluding withdrawals or suspensions if the applicable Rating Agency stipulates in writing that the rating action is being taken for non-credit related reasons) or reduced below "A1" (or its equivalent) by Moody's, "A+" (or its equivalent) by S&P or "A+" (or its equivalent) by Fitch, respectively;

(k) Any “event of default” under (and as defined in) any Other Credit Agreement shall occur and be continuing under such Other Credit Agreement; or

(l) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Parity Debt of the City by the City or any governmental authority of competent jurisdiction; or

(m) Dissolution or termination of the existence of the City or the Community Energy Program.

Section 7.02. Consequences of an Event of Default. If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) declare the Commitment and the obligation of the Lender to make Credit Extensions to be terminated, whereupon such Commitment and obligation shall be terminated;

(b) by written notice to the City, declare the outstanding amount of the Obligations and all other obligations of the City under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(c) require that the City provide cash collateral in an amount equal to the Minimum Collateral Amount as required in Section 2.15(a);

(d) at the expense of the City, cure any Event of Default or event of nonperformance hereunder or under any other Basic Document; *provided, however*, that the Lender shall have no obligation to effect such a cure;

(e) by written notice to the City, impose the Default Rate with respect to the Obligations (which imposition may be retroactive to the date on which such Event of Default first occurred); and

(f) exercise, or cause to be exercised, any and all remedies as it may have under the Basic Documents and as otherwise available at Law and at equity.

If an Event of Default described in Section 7.01(f) occurs with respect to the City, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the City accrued hereunder and under any other Basic Documents including any break funding payment or prepayment premium, shall automatically become due and payable, and the obligation of the City to cash collateralize the LC Exposure as provided in clause (c) above shall automatically

become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City.

Section 7.03. Solely for the Benefit of Lender. The rights and remedies of the Lender specified herein are for the sole and exclusive benefit, use and protection of the Lender, and the Lender is entitled, but shall have no duty or obligation to the City or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Lender hereunder or under any of the other Basic Documents.

Section 7.04. Discontinuance of Proceedings. In case the Lender shall proceed to invoke any right, remedy or recourse permitted hereunder or under the other Basic Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Lender shall have the unqualified right so to do and, in such event, the City and the Lender shall be restored to their former positions with respect to the Obligations, the Basic Documents and otherwise, and the rights, remedies, recourse and powers of the Lender hereunder shall continue as if the same had never been invoked.

ARTICLE VIII

CHANGE IN CIRCUMSTANCES

Section 8.01. Increased Costs.

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender (except any such reserve requirement reflected in the Adjusted Term SOFR Rate);

(ii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or any Loans made by the Lender or any Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Lender with respect to this Agreement, any Loan, or the making, maintenance or funding of any Loan, or to increase the cost to the Lender of issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the

Lender, the City will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Lender determines that any Change in Law affecting the Lender or the Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or liquidity or on the capital or liquidity of the Lender's holding company, if any, as a consequence of this Agreement, the Commitment, the Letters of Credit issued by the Lender, or the Loans made by the Lender to a level below that which the Lender or the Lender's holding company, if any, could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company, if any, with respect to capital adequacy), then from time to time City will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company, if any, for any such reduction suffered.

(c) *Certificates for Reimbursement.* Promptly upon obtaining knowledge of the expected occurrence of any event specified in subsections (a) or (b) of this Section 8.01, the Lender shall use commercially reasonable efforts to deliver to the City a certificate describing the expected occurrence of any such event specified in subsection (a) or (b) of this Section, 8.01 and the anticipated date upon which the Lender would make such demand upon the City. Thereafter, a certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in subsections (a) or (b) of this Section 8.01 shall be delivered to the City and shall be conclusive absent manifest error. The City shall pay the Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof unless otherwise stated therein and unless all obligations due and owing under this Agreement are paid in full prior to the date on which any increased cost related to any event referred to in paragraphs (a) or (b) of this Section 8.01 are imposed upon the Lender or Participant; *provided* that subject to the following proviso, any increased costs in excess of the product of twenty basis points (0.20%) and the Commitment shall be paid by the City to the Lender within ninety (90) calendar days of the date the Lender makes demand therefor on the City; *provided further* that to the extent a particular amount of increased costs in excess of the product of twenty basis points (0.20%) and the Commitment is expected to be an ongoing obligation of the City (a "*Recurring Increased Cost*"), as determined by the Lender in a written notice from the Lender to the City, then after the first payment of such Recurring Increased Costs pursuant to the immediately preceding provision, subsequent payments of such Recurring Increased Costs shall be due and payable within thirty (30) days of the date the Lender makes demand therefor.

(d) *Delay in Requests.* Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that City shall not be required to compensate the Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than ninety (90) days prior to the date that the Lender first notifies City of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 8.02. Net of Taxes, Etc.

(a) *Taxes.* Any and all payments to the Lender by the City under any Basic Document shall be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the City) requires the deduction or withholding of any Tax from any such payment by the City, then the City shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the City shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 8.02) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. The foregoing obligation of the City shall not apply to any payment to a Participant that is a non-U.S. person that would be subject to withholding under FATCA.

(b) *Indemnity.* To the extent permitted by law, the City shall indemnify the Lender for the full amount of any Indemnified Taxes, whether or not such Indemnified Taxes were correctly or legally asserted; *provided* that City shall not be obligated to indemnify the Lender for any penalties, interest or expenses relating to Indemnified Taxes not asserted and incorrectly paid by the Lender or arising from the Lender's gross negligence or willful misconduct. The Lender agrees to give notice to the City of the assertion of any claim against the Lender relating to such Indemnified Taxes as promptly as is practicable after being notified of such assertion; *provided* that the Lender's failure to notify City promptly of such assertion shall not relieve City of its obligation under this Section 8.02. Payments by the City pursuant to this indemnification shall be made within thirty (30) days from the date the Lender makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Lender agrees to repay to the City any refund (including that portion of any interest that was included as part of such refund and including any credit or deduction for such Indemnified Taxes against any other taxes payable by the Lender to any taxing jurisdiction in the United States) with respect to Indemnified Taxes paid by the City pursuant to this Section 8.02 received by the Lender for Indemnified Taxes that were paid by the City pursuant to this Section 8.02 promptly upon receipt of such refund. The Lender also agrees to contest, with the cooperation and at the expense of the City, any such Indemnified Taxes which the City reasonably believes not to have been properly assessed. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the City or any other Person.

(c) *Payment of Other Taxes by the City.* The City shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(d) *Notice.* As soon as practicable after the date of any payment of Taxes by the City, the City shall furnish to the Lender, the original or a certified copy of a receipt evidencing payment thereof.

(e) *Survival of Obligations.* The obligations of the City and the Lender under this Section 8.02 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

Section 8.03. Break Funding Payments. (a) With respect to Loans that are not RFR Loans, in the event of (i) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto or (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.04(a) and is revoked in accordance therewith), then, in any such event, the City shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the City and shall be conclusive absent manifest error. The City shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans) or (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.04(a) and is revoked in accordance therewith), then, in any such event, the City shall compensate the Lender for the loss, cost and expense attributable to such event. A certificate of the Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the City and shall be conclusive absent manifest error. The City shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 8.04. Mitigation Obligation . If the Lender requests compensation under Section 8.01, or if the City is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 8.02, then the Lender shall use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 8.01 or 8.02, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender.

Section 8.05. Survival. All of the City's obligations under this Article VIII shall survive termination of the Commitment and repayment of all other obligations of the City hereunder.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Notices. Except as otherwise specifically provided herein, all notices, requests and other communications hereunder shall be in electronic, telephonic or written form (including bank wire, telegram, telecopier or similar writing) and shall be given to the party to whom addressed, at its address or telephone or telecopier number set forth below, or such other address or telephone or telecopier number as such party may hereafter specify for the purpose by notice to the other parties. Each such notice, request or communication shall be effective (a) if given by telephone, when given to the number indicated below to a person which the transmitting party reasonably believes to be an authorized representative of the party to whom the notice is directed (which, in the case of the City, shall be any Authorized Officer), (b) if given by telecopy or other electronic means, when such communication is transmitted to the appropriate address and the appropriate answerback is received, (c) if given by mail, five (5) days after such communication is deposited in the United States mail with first class postage prepaid, addressed as aforesaid or (d) if given by any other means, when delivered at the appropriate address; *provided* that notices to the Lender under Article II shall not be effective until received:

If to the City, to:

City of San Jose, California
Community Energy Department
200 East Santa Clara Street
San Jose, California 95113
Attention: Lori Mitchell/Director of Community Energy
Telephone: 408-535-4880
Email: sjceaccounting@sanjoseca.gov

With a copy to:

City of San Jose, California
Finance Department
200 East Santa Clara Street, 13th Floor
San Jose, California 95113
Attention: Director of Finance
Telephone: 408-535-7010
Email: debt.management@sanjoseca.gov

If to the Lender for Loans:

JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076

Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: Allyson.l.goetschius@jpmorgan.com or
Janice.r.fong@jpmorgan.com

and

Attention: PFG Servicing
Telephone: (302) 634-4092
Email: PFG_Servicing@jpmorgan.com

with a copy to:

JPMorgan Loan Services
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 01
Newark, Delaware 19713
Attention: PFG Servicing
Telephone: (302) 634-4092
Email: PFG_Servicing@jpmorgan.com

All notices given by telephone, telecopier or other electronic means shall be confirmed by written notice mailed as promptly as practicable thereafter.

Section 9.02. No Waivers. No failure or delay by the Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 9.03. Expenses; Indemnification. (a) City shall pay (i) the reasonable fees of counsel for the Lender, as set forth in the Fee Agreement, in connection with the initial negotiation, preparation and execution of this Agreement and the other Basic Documents, (ii) the reasonable fees of counsel for the Lender in connection with any waiver or consent hereunder or any amendment hereof or any Potential Event of Default, alleged Potential Event of Default or Event of Default hereunder and (iii) if an Event of Default occurs, all out-of-pocket expenses incurred by the Lender, including the reasonable fees and disbursements of counsel, in connection with such Event of Default and collection, bankruptcy, insolvency and other enforcement proceedings resulting therefrom.

(b) The City hereby agrees to indemnify the Lender and hold the Lender harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel, which may be incurred by the Lender in connection with any investigative, administrative or judicial proceeding relating to or arising out of this Agreement or any other Basic Document or any actual or proposed use of

proceeds of Loans hereunder (collectively “*Indemnified Costs*”); *provided* that the City is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender’s willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction.

Section 9.04. Amendments and Waivers. Any provision of this Agreement or Note may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the City and the Lender.

Section 9.05. Successors and Assigns; Participations. (a) *Successors and Assigns.* This Agreement is binding on the City’s and the Lender’s successors and assignees. The City agrees that it may not assign this Agreement without the Lender’s prior consent. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the City (which consent may not be withheld unreasonably); *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the City and the Lender, and no other Person (including, without limitation, any counterparty to a Power Purchase Agreement) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) *Transferees.* The City authorizes the Lender to disclose to any participant or assignee (each, a “*Transferee*”) and any prospective Transferee such financial and other information in the Lender’s possession concerning City which has been delivered to the Lender pursuant to this Agreement or which has been delivered to the Lender by the City in connection with the Lender’s credit evaluation of the City prior to entering into this Agreement.

(c) *Assignment to Federal Reserve.* The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the City to the Lender in accordance with the terms of this Agreement will satisfy the City’s obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

(d) *Participations.* Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a “*Participant*”) a participation or participations in all or any part of the Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “*Participation*”) without the consent of the City. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the City shall continue to deal solely and directly with the Lender in connection with the Lender’s rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The City agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were Lender; *provided* that no Participant will have the

right to declare, or to take actions in response to, an Event of Default under Section 7.01 hereof; and *provided, further*, that the City's liability to any Participant (including, without limitation, amounts payable pursuant to Article II hereof) will not in any event exceed that liability which the City would owe to Lender but for such participation.

Section 9.06. Registers. (a) The Lender, acting solely for this purpose as an agent of the City, shall maintain a copy of each assignment and assumption delivered to it and a register for the recordation of the names and addresses of the applicable Person, and the commitments of, and principal amounts (and stated interest) of the Loans owing to, each applicable Person pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive absent manifest error, and the City and the Lender shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the City and the Lender, at any reasonable time and from time to time upon reasonable prior notice.

(b) If the Lender shall sell a participation, it shall, acting solely for this purpose as a non-fiduciary agent of the City, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Basic Documents (the "*Participant Register*"); *provided* that the Lender shall have no obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Basic Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, JPMorgan Chase Bank, N.A. shall have no responsibility for maintaining a Participant Register other than in its capacity as the Lender.

Section 9.07. Counterparts; Integration. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement constitutes the entire agreement and understanding between the parties hereto and, except with respect to the other documents and agreements referred to herein, supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 9.08. Governing Law. This Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and enforced in accordance with, the laws of the State of California without giving effect to conflicts of laws provisions; *provided* that the obligations of the Lender hereunder shall be governed by the laws of the State of New York without giving effect to conflicts of laws provisions.

Section 9.09. Jurisdiction; Venue; Waiver of Jury Trial. (a) Each of the parties hereto hereby submits to the nonexclusive jurisdiction of any federal or state court of competent

jurisdiction in the State and sitting in the County of Santa Clara for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement or any other Basic Document; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 9.01 hereof.

(b) With respect to any suit, action or proceeding relating to this Agreement, to the fullest extent permitted by applicable law, each party to this Agreement waives any right it may have to trial by jury. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

Section 9.10. Payments Set Aside. To the extent that any payment by or on behalf of the City is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding, bankruptcy or insolvency or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

Section 9.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Basic Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Potential Event of Default at the time of any Credit Extension, and shall continue in full force until the Maturity Date.

Section 9.12. Severability. If any provision of this Agreement or the other Basic Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Basic Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.13. No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof, the Note), the City acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the transactions described in this Agreement between the Lender and the City are arm's-length commercial transactions between City, on the one hand, and the Lender, on the other hand, and (ii) the City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; (b) (i) the Lender and its Affiliates each is and has been acting solely as a principal (*i.e.*, as a lender and not as a purchaser of securities within the meaning of the Securities Act of 1933 or the Securities and Exchange Act of 1934) and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor (municipal, financial or otherwise), agent or fiduciary for City or any other Person and (ii) neither the Lender nor any of its Affiliates has any obligation to the City with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the Note; and (c) the Lender and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the City, and neither the Lender nor any of its Affiliates has any obligation to disclose any of such interests to the City. To the fullest extent permitted by law, the City, hereby waives and releases any claims that it may have against the Lender or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 9.14. Electronic Execution of Certain Documents. Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an "*Ancillary Document*") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by an Authorized Officer without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the City hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of

remedies, bankruptcy proceedings or litigation between the Lender and the City, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against the Lender and any of its Related Parties for any liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of the City to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.15. USA Patriot Act. The Lender hereby notifies City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), it is required to obtain, verify and record information that identifies City, which information includes the name and address of the City and other information that will allow the Lender to identify City in accordance with the Patriot Act. The City agrees to, promptly following a request by the Lender, provide all such other documentation and information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

CITY OF SAN JOSÉ, CALIFORNIA

By: _____
Name: Julia H. Cooper
Title: Director of Finance

By: _____
Name: Lori Mitchell
Title: Director of Community Energy

Approved as to form:

NORA FRIMANN, City Attorney

By: _____
Name: Rosa Tsongtaatarii
Title: Chief Deputy City Attorney

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

Signature Page to Revolving Credit Agreement

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A

FORM OF NOTE

Not to exceed \$ _____

Dated Date: [Date]

FOR VALUE RECEIVED, the undersigned CITY OF SAN JOSE, CALIFORNIA (the “City”), hereby promises to pay to JPMORGAN CHASE BANK, N.A., or its registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of all Reimbursement Obligations related to Letters of Credit and each Loan from time to time made by the Lender to the City, in each case under that certain Revolving Credit Agreement, dated as of [____], 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”), between the City and the Lender, in accordance with the terms of the Agreement.

The City promises to pay interest on the unpaid principal amount of each Loan and Reimbursement Obligations from the date of such Loan or Honor Date, as applicable, until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Lender in Dollars in immediately available funds at the Lender’s Lending Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

This Note is an obligation of the City payable from and secured by a pledge of and a senior lien and charge upon Net Revenues. This Note is payable as to principal and interest thereof, exclusively from Net Revenues. This Note and the interest hereon are senior to all other debt incurred and payable from Net Revenues.

The Loans made by the Lender and Reimbursement Obligations shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and Reimbursement Obligations and payments with respect thereto.

The Lender, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

Delivery of an executed counterpart of a signature page of this Note by fax transmission or other electronic mail transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Note.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, the City has caused this Note to be signed as of the Dated Date specified above.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

NORA FRIMANN, City Attorney

By: _____
Chief Deputy City Attorney

LOANS AND PAYMENTS WITH RESPECT THERETO

DATE	AMOUNT OF LOAN MADE	AMOUNT OF PRINCIPAL OR INTEREST PAID THIS DATE	OUTSTANDING PRINCIPAL BALANCE THIS DATE	NOTATION MADE BY
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

EXHIBIT B

FORM OF BORROWING REQUEST

Date: _____, 20__

To: JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of [____], 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”) (the terms defined therein being used herein as defined in the Agreement), between City of San Jose, California (the “*City*”), and JPMorgan Chase Bank, N.A. (the “*Lender*”).

The undersigned hereby requests, pursuant to Section 2.01 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the “*Proposed Loan*”):

1. The Business Day of the Proposed Loan is _____ (the “*Issuance Date*”).
2. In the principal amount of \$ _____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, (i) the Revolving Credit Exposure will not exceed the Commitment and (ii) the Working Capital Revolving Credit Exposure will not exceed the Working Capital Sublimit, in each case, as of the Issuance Date.
3. The Proposed Borrowing is a [Working Capital Loan] [Cash Collateral Loan and the City has provided to the Lender on or prior to the Issuance Date reasonably detailed evidence of the underlying cash collateral requirement for which the Cash Collateral Loan is being used to satisfy.] [Reimbursement Loan, the proceeds of which will be used to repay Reimbursement Obligations with respect to Standby Letter of Credit No. _____, issued under the LC Exposure ([Five][Two]-Year Sublimit) on _____, 20__].

4. [The duration of the Interest Period for each Term Benchmark Loan made as part of the Proposed Loan, if applicable, is ___ month[s] (which shall be 1, 3 or 6 months).][The Proposed Loan is an ABR Loan.]¹⁴

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the City set forth in Article IV of the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct on and as of the date of such Credit Extension with the same force and effect as if made on and as of such date, in each case, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

(b) No Potential Event of Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited [in the amount of \$ _____] to or on behalf of the City in accordance with the instructions set forth below and the City hereby confirms that the Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

¹⁴ Reimbursement Loans must be ABR Loans.

EXHIBIT C

FORM OF NOTICE OF LOAN PREPAYMENT

To: JPMorgan Chase Bank, N.A., as lender (the “*Lender*”)

RE: Revolving Credit Agreement, dated as of [____], 2023, by and between City of San Jose, California (the “*City*”) and the Lender (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “*Credit Agreement*”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: [Date]

The City hereby notifies the Lender that on _____¹⁵ pursuant to the terms of Section 2.04 (Prepayments) of the Credit Agreement, the City intends to optionally prepay the Loan in the following amount(s): \$ _____¹⁶

¹⁵ Specify date of such prepayment.

¹⁶ Any prepayment shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF LETTER OF CREDIT REQUEST

Date: _____, 20__

To: JPMorgan Chase Bank, N.A.
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: _____

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of [____], 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*”) (the terms defined therein being used herein as defined in the Agreement), between City of San Jose, California (the “*City*”), and JPMorgan Chase Bank, N.A. (the “*Lender*”) and hereby requests, pursuant to Section 2.03 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the “*Proposed Letter of Credit*”):

1. The Business Day of the Proposed Letter of Credit is _____, 20__ (the “*Issuance Date*”).

2. The principal amount of the Proposed Letter of Credit is \$____. After giving effect to the issuance of the Proposed Letter of Credit, (i) the Revolving Credit Exposure will not exceed the Commitment, (ii) the LC Exposure (Five-Year Sublimit) will not exceed the LC Expiration Date Sublimit (Five-Years) and (iv) the LC Exposure (Two-Year Sublimit) will not exceed the LC Expiration Date Sublimit (Two-Years), in each case, as of the Issuance Date.

3 The Proposed Letter of Credit is to be issued under the LC Exposure ([Five][Two]-Year Sublimit).

4. The tenor of the Proposed Letter of Credit shall be [].

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the City set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Potential Event of Default or Event of Default has occurred and is continuing.

6. The undersigned hereby confirms that the City has submitted a Standby Letter of Credit Application in the form attached as Annex I (or any successor form provided by the Lender to the City and the Lender).

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g., "*pdf*" or "*tif*") shall be effective as delivery of a manually executed counterpart of this notice.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

ANNEX I

FORM OF STANDBY LETTER OF CREDIT APPLICATION

[TO COME FROM LENDER]

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

[____], 20[]

This Compliance Certificate (this “Certificate”) is furnished to JPMorgan Chase Bank, N.A. (including its successors and assigns, the “Lender”) pursuant to the Revolving Credit Agreement, dated as of [____], 2023 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”), by and between the City of San Jose, California (the “City”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

This Compliance Certificate is being delivered in connection with [annual audited financials for the Fiscal Year ended _____, 20__][unaudited financial statements for the fiscal quarter ended _____, 20__].

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Officer of the City;

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Community Energy Program during the accounting period covered by the attached financial statements;

3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Potential Event of Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and

4. The financial statements required by Section [5.01(b)]/[5.01(c)] of the Agreement (having been posted to <http://www.sanjosecleanenergy.org/>) and being furnished to you concurrently with this certificate fairly represent the financial condition of the Community Energy Program in accordance with GAAP as of the dates and for the periods covered thereby.

5. The City is in compliance with Section 5.11 of the Agreement on the date hereof, as evidenced by the Debt Service Coverage Ratio and Days Liquidity on Hand calculations set forth on Schedule 1 hereto.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the City has taken, is taking, or proposes to take with respect to each such condition or event:

_____]

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered as of the date first above written.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: [Director of Finance]

By: _____
Name: _____
Title: [Director of Community Energy
Department]

**SCHEDULE 1
TO
COMPLIANCE CERTIFICATE
DEBT SERVICE COVERAGE RATIO NOTICE**

Debt Service Coverage (Section 5.11) 4-QUARTERS
//

A. NET REVENUES: \$ _____

B. ANNUAL DEBT SERVICE: \$ _____

C. ROW A DIVIDED BY ROW B, EXPRESSED AS RATIO _____

IS THE RATIO IN ROW C GREATER THAN OR EQUAL TO 1.10? Y/N

Days Liquidity on Hand (Section 5.11) 4-QUARTERS
//

A: CASH AND CASH EQUIVALENTS: \$ _____

B: WORKING CAPITAL AVAILABILITY: \$ _____

C. ROW A PLUS ROW B: **\$ _____**

D. OPERATION AND MAINTENANCE EXPENSES \$ _____

E. INTEREST EXPENSE \$ _____

F. ROW D PLUS ROW E: \$ _____

G. ROW F MULTIPLIED BY 1/365: **\$ _____**

H. ROW C DIVIDED BY ROW G (DAYS LIQUIDITY ON HAND): _____ Days

ARE THE DAYS IN ROW G GREATER THAN OR EQUAL TO 90? Y/N