
REVOLVING CREDIT AGREEMENT

dated as of November 1, 2018

between

CITY OF SAN JOSE, CALIFORNIA

and

BARCLAYS BANK PLC

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	13
Section 1.03.	Letter of Credit Amounts	14
Section 1.04.	UCC Terms	14
ARTICLE II	THE COMMITMENT.....	14
Section 2.01.	Loans.....	14
Section 2.02.	Borrowings of Loans.....	14
Section 2.03.	Letters of Credit	15
Section 2.04.	Prepayments.....	19
Section 2.05.	Termination or Reduction of Commitment.....	20
Section 2.06.	Repayment of Loans	21
Section 2.07.	Interest and Default Rate	21
Section 2.08.	Fees	22
Section 2.09.	Computation of Interest and Fees	23
Section 2.10.	Evidence of Debt.....	23
Section 2.11.	Payments	23
Section 2.12.	Maximum Interest Rate.....	23
Section 2.13.	Cash Collateral.....	24
Section 2.14.	Payment and Security for Obligations.	25
ARTICLE III	CONDITIONS PRECEDENT TO BORROWINGS	25
Section 3.01.	Conditions of Initial Borrowing; Authority; Enforceability	25
Section 3.02.	Conditions to All Borrowings.....	26
ARTICLE IV	REPRESENTATIONS AND WARRANTIES OF THE CITY	27
Section 4.01.	Organization, Powers, Etc.....	27
Section 4.02.	Authorization, Absence of Conflicts, Etc.	27
Section 4.03.	Governmental Consent or Approval	28
Section 4.04.	Binding Obligation.....	28
Section 4.05.	Litigation.....	28
Section 4.06.	Financial Condition.....	28
Section 4.07.	Power Purchase Agreements; PGE Agreement	28
Section 4.08.	Amendments	29
Section 4.09.	Security	29
Section 4.10.	No Defaults	29
Section 4.11.	Operating Reserve Account	29
Section 4.12.	No Violation of Maximum Interest Rate	30
Section 4.13.	No Proposed Legal Changes.....	30

Section 4.14.	Compliance	30
Section 4.15.	Environmental Laws	30
Section 4.16.	Margin Stock.....	30
Section 4.17.	Taxes	30
Section 4.18.	ERISA	31
Section 4.19.	Incorporation of Representations and Warranties by Reference	31
Section 4.20.	Immunity.....	31
Section 4.21.	Sanctions Concerns and Anti-Corruption Laws	31
Section 4.22.	No Existing Right to Accelerate	32
ARTICLE V	AFFIRMATIVE COVENANTS OF THE CITY.....	32
Section 5.01.	Reports, Certificates and Other Information.....	32
Section 5.02.	Inspections; Discussion.....	33
Section 5.03.	Reserved.....	34
Section 5.04.	Preservation of Pledge	34
Section 5.05.	Taxes and Liabilities	34
Section 5.06.	Ratings	34
Section 5.07.	Incorporation of Covenants.....	34
Section 5.08.	Disclosure to Participants	34
Section 5.09.	Further Assurances.....	34
Section 5.10.	Existence, Etc.....	35
Section 5.11.	Maintenance of Properties	35
Section 5.12.	No Different or More Restrictive Terms	35
Section 5.13.	Application of Loan Proceeds.....	35
Section 5.14.	Debt Service Coverage Ratio.....	35
Section 5.15.	Operating Reserve Requirement	35
Section 5.16.	Operating Reserve Account	36
ARTICLE VI	NEGATIVE COVENANTS OF THE CITY	36
Section 6.01.	Compliance with Laws, Etc.	36
Section 6.02.	Other Debt.....	36
Section 6.03.	Amendments	36
Section 6.04.	Waiver of Immunity.....	36
Section 6.05.	Offering Documents.....	37
Section 6.06.	Liens on Revenues or Operating Reserve Account	37
Section 6.07.	Expenditures from Operating Reserve Account	37
Section 6.08.	Federal Reserve Board Regulations.....	37
Section 6.09.	Repayment of Obligations to the City or the Authority.....	37
ARTICLE VII	EVENTS OF DEFAULT AND REMEDIES	37
Section 7.01.	Events of Default	37
Section 7.02.	Consequences of an Event of Default.....	40
Section 7.03.	Solely for the Benefit of Purchaser	41
Section 7.04.	Discontinuance of Proceedings.....	41

ARTICLE VIII	CHANGE IN CIRCUMSTANCES.....	41
Section 8.01.	Increased Costs	41
Section 8.02.	Net of Taxes, Etc.....	42
Section 8.03.	Illegality	44
Section 8.04.	Inability to Determine Rates	44
Section 8.05.	Compensation for Losses	44
Section 8.06.	Survival	45
ARTICLE IX	MISCELLANEOUS	45
Section 9.01.	Notices	45
Section 9.02.	No Waivers	46
Section 9.03.	Expenses; Documentary Taxes; Indemnification	46
Section 9.04.	Amendments and Waivers	47
Section 9.05.	Successors and Assigns; Participations; Information	47
Section 9.06.	Counterparts; Integration	48
Section 9.07.	Governing Law	48
Section 9.08.	Jurisdiction; Venue; Waiver of Jury Trial	48
Section 9.09.	Payments Set Aside.....	49
Section 9.10.	Survival of Representations and Warranties	49
Section 9.11.	Severability	49
Section 9.12.	No Advisory or Fiduciary Relationship.....	49
Section 9.13.	Electronic Execution of Certain Documents.....	50
Section 9.14.	USA Patriot Act	50
Section 9.15.	Acknowledgement and Consent to Bail-In of EEA Financial Institutions.....	50
EXHIBIT A	— Form of Note	
EXHIBIT B	— Form of Loan Notice	
EXHIBIT C	— Form of Notice of Loan Prepayment	
EXHIBIT D	— Form of Compliance Certificate	

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT (as amended, modified or supplemented from time to time, this “*Agreement*”) is entered into as of November 1, 2018, between CITY OF SAN JOSE, CALIFORNIA (the “*City*”) and BARCLAYS BANK PLC (together with its successors and assigns, the “*Bank*”).

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 Bank hereunder and the Bank 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 Bank for Credit Extensions (as defined herein) made by the Bank under the Commitment (as defined herein), and interest thereon, are created under and will be evidenced by this Agreement and the Note, and will be secured by a pledge of and lien on Revenues (as defined herein), subject only to amounts required to be paid by the City pursuant to the terms of Power Purchase Agreements (as defined herein) executed by the City, which will not be subject to such lien, and any Permitted Senior Liens (as defined herein), which generally consists of amounts received and accrued by the City with respect to the Community Energy Program, and not the General Fund of the City or any other revenues or moneys of the City deposited in the City’s General Fund;

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

ARTICLE I

DEFINITIONS

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

“*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.

“Aggregate Annual Debt Service Requirement” means, for any date the same is to be determined:

(i) prior to December 31, 2022, an amount equal to the principal of, and interest on, the Total Outstandings and any other Debt payable from Revenues or Net Revenues which is required to be paid during the next four (4) quarter period commencing on such date; and

(ii) on and after December 31, 2022, an amount equal to the principal of, and interest on, the Total Outstandings and any other Debt payable from Revenues or Net Revenues which is required to be paid during the next four (4) quarter period commencing on such date *less* amounts then on deposit in the Operating Reserve Account in an amount up to, but not to exceed, \$20,000,000.

“Agreement” means this Revolving Credit Agreement, between the City and the Bank, as amended and supplemented from time to time in accordance with the terms hereof.

“Applicable Spread” means a rate per annum equal to 2.10%.

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

“Authorized Officer” means any person authorized from time to time in writing by the City to perform a designated act or execute a designated document.

“Availability Period” means, with respect to (i) the agreement of the Bank to issue Letters of Credit for the account of the City pursuant to the terms and conditions hereof, the period from and including the Effective Date to and excluding the Commitment Termination Date, and (ii) the agreement of the Bank to extend Loans pursuant to the terms and conditions hereof, the period from the Effective Date to and excluding the Loan Facility Scheduled Termination Date.

“Available Commitment” means an initial amount equal to \$50,000,000 and thereafter such initial amount adjusted from time to time as follows: (a) downward in an amount equal to any Loan made to, and an amount equal to the L/C Obligations related to any Letter of Credit issued for the account of, the City under the Commitment; (b) prior to the Loan Facility Scheduled Termination Date only, upward in an amount equal to the principal amount of any Loan made to the City under the Commitment that is repaid or prepaid in the manner provided herein; (c) upward in an amount equal to the principal amount equal to the L/C Obligations related to any Letter of Credit issued for the account of the City under the Commitment that is repaid, prepaid, expires or terminates, as applicable, in the manner provided herein; (d) downward in an amount equal to any reduction thereof effected pursuant to Section 2.05 hereof; (e) downward to the Letter of Credit Sublimit on the Loan Facility Scheduled Termination Date; and (f) downward to zero upon the Commitment Termination Date in accordance with the terms hereof; *provided, that*, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed (i) \$50,000,000 from the Effective Date to but excluding Loan

Facility Scheduled Termination Date, and (ii) \$35,000,000 from and after the Loan Facility Scheduled Termination Date.

“Bail-In Action” means the exercise by a resolution authority of any write-down or conversion power existing from time to time (including, without limitation, any power to amend or alter the maturity of eligible liabilities of an institution under resolution or amend the amount of interest payable under such eligible liabilities or the date on which interest becomes payable, including by suspending payment for a temporary period and together with any power to terminate and value transactions) under, and exercised in compliance with, any laws, regulations, rules or requirements in effect in the United Kingdom relating to the transposition of the Bank Recovery and Resolution Directive, as amended from time to time, including but not limited to, the Banking Act 2009 as amended from time to time, and the instruments, rules and standards created thereunder, pursuant to which our obligations (or those of our affiliates) can be reduced (including to zero), cancelled or converted into shares, other securities, or other obligations of ours or any other person.

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

“Borrowing” means a borrowing of Loans from the Bank pursuant to Section 2.01 hereof.

“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, and if such day relates to a Loan, any day that is also a London Banking Day.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Bank, as collateral for L/C Obligations or any other Obligations, (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts satisfactory to the Bank, and/or (c) if the Bank shall agree, in its sole discretion, other credit support, in each case, in Dollars and in such amount as the Bank may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to the Bank. *“Cash Collateral”* shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“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 Bank 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 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 [Name of Bank], [ABA#, Account #, Reference _____, Attention _____,] or such other account as the City may inform the Bank in writing and which the Bank confirms in writing and telephonic notice.¹

“*Commercial Paper*” means the commercial paper notes authorized to be issued by the Authority pursuant to that certain Trust Agreement, dated as of January 1, 2004, between the Authority and Wells Fargo Bank, National Association, as trustee, as amended, restated, extended, supplemented or otherwise modified in writing from time to time.

“*Commitment*” means the Bank’s obligation to (a) make Loans to the City pursuant to Section 2.01 and (b) issue Letters of Credit for the account of the City pursuant to Section 2.03. Subject at all times to Sections 2.05 and 7.02 hereof, the Commitment from and after the (x) Effective Date to but excluding the Loan Facility Scheduled Termination Date shall be \$50,000,000, (y) Loan Facility Scheduled Termination Date and at all times thereafter shall be \$35,000,000.

“*Commitment Fee*” has the meaning set forth in Section 2.08(a) hereof.

“*Commitment Fee Rate*” means (i) with respect to the Bank’s commitment to make Loans to the City pursuant to Section 2.01, a rate per annum equal to 0.65% and (ii) with respect to the Bank’s commitment to issue Letters of Credit for the account of the City pursuant to Section 2.03, a rate per annum equal to 1.05%; *provided*, that, in each case, upon the occurrence, and at all times during the continuation, of an Event of Default, the Commitment Fee Rate shall increase four percent (4.0%) per annum above the Commitment Fee Rate otherwise in effect.

“*Commitment Termination Date*” shall mean the earlier of:

- (a) the Scheduled Termination Date; and
- (b) the date the Commitment is reduced to zero pursuant to Section 2.05 or Section 7.02 hereof.

¹ Note: To be provided by City.

“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 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.

“Community Energy Program Commercial Paper” means Commercial Paper issued by the Authority to establish the Community Energy Program, in the aggregate principal amount not to exceed at any time \$10,000,000.

“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, financial 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. Notwithstanding anything in the foregoing to the contrary, in no event shall the Costs of Issuance exceed an aggregate amount equal to \$225,000.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“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) all obligations of such Person under any Swap Contract.

“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, on any date the same is to be determined, the ratio of (i) Net Revenues collected by the City during the four (4) fiscal-quarter period most recently ended on or before such date, to (ii) the Aggregate Annual Debt Service Requirement as of such date.

“Default Rate” means, for any day, a rate of interest per annum equal to the sum of the Prime Rate in effect on such day plus four percent (4.00%).

“*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 [November __, 2018], subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Section 3.01 hereof.

“*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.

“*Financing Documents*” means this 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.

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

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*Full Utilization Date*” means December 31, 2019.

“*GAAP*” has the meaning set forth in Section 1.02 hereof.

“*Governmental Authority*” means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

“*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.

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

“*ISP*” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“*Interest Payment Date*” means each of (i) the first Business Day of each calendar month, (ii) the date on which any principal amount of the related Loan or L/C Obligation, as applicable, is paid or prepaid, for any reason, and (iii) the Commitment Termination Date.

“*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.

“*Lending Office*” means the office of the Bank 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.

“*L/C 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.

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

“*L/C Obligations*” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all

Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.03. For all purposes of this Agreement, if on any date of determination, a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

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

“*Letter of Credit Application*” 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 Bank.

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

“*Letter of Credit Fee*” has the meaning specified in Section 2.03(g) hereof.

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

“*LIBOR*” means the fluctuating rate of interest per annum equal to the London Interbank Offered Rate (or a comparable or successor rate which is approved by the Bank), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Bank from time to time) as determined for each Business Day at or about 11:00 a.m., London time, two (2) London Banking Days prior to the date in question, for Dollar deposits with a one-month term, as adjusted from time to time in the Bank’s commercially reasonable discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate (i) is not available at such time for any reason or if it is unlawful to fund Loans using such rate, then the rate will be a successor rate mutually agreed upon by the City and the Bank, and until such successor rate shall be so agreed upon, the Prime Rate, or (ii) is less than zero, such rate shall be deemed zero for purposes of this Agreement.

“*LIBOR Rate*” means a fully floating rate per annum equal to the sum of LIBOR, plus the Applicable Spread; *provided, however*, that immediately upon the occurrence of an Event of Default (and without the requirement for any notice to be given with respect thereto) and during the continuation of such Event of Default, “*LIBOR Rate*” shall mean the Default Rate.

“*LIBOR Reset Date*” means the first (1st) Business Day of each calendar month.

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

“*Loan Facility Scheduled Termination Date*” means [November __, 2021].

“*Loan Notice*” 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 Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank), appropriately completed and signed by an Authorized Officer.

“*Loan Sublimit*” means an amount equal to the lesser of (a) \$20,000,000 and (b) the Commitment. The Loan Sublimit is part of, and not in addition to, the Commitment.

“*London Banking Day*” means any day on which dealings in U.S. Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“*Material Adverse Effect*” means: (a) a material impairment of the ability of the City to perform its obligations (financial or otherwise) under any Financing Document; (b) a material impairment of the ability of the City to pay its obligations as they come due under any Material Power Purchase Agreement; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the City of any Financing Document; (d) a material adverse effect upon the legality, validity, binding effect or enforceability against the City of any Material Power Purchase Agreement that would have a material adverse effect on Net Revenues; or (e) a material adverse effect on the rights, interests, security or remedies of the Bank with respect to this Agreement or any other Financing Document or the Ordinances.

[“*Material Power Purchase Agreements*” means one (1) or more Power Purchase Agreement (x) each with product delivery term(s) on an individual basis of more than one hundred eighty (180) days and (y) with a notional amount or amounts, in the aggregate, of \$20,000,000 or more and concurrently outstanding.]

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

“*Minimum Collateral Amount*” means, at any time, with respect to Cash Collateral provided in accordance with the provisions of Section 2.13(a)(i) or 2.13(a)(ii), an amount or stated amount equal to 105% of the Outstanding Amount of all L/C Obligations.

“*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, including, without limitation, amounts required to be paid by the City pursuant to the terms of Power Purchase Agreements during such period.

“*Note*” means that certain Note dated the Effective Date of the City, in favor of the Bank, evidencing the outstanding Loans and any Unreimbursed Amounts made by the Bank 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 Bank (including any form on an electronic platform or electronic transmission system as shall be approved by the Bank), appropriately completed and signed by an Authorized Officer.

“*Obligations*” means the obligations of the City under this Agreement to repay (i) all Loans, all L/C Obligations, 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 Bank (including, without limitation, any amounts to reimburse the Bank for any advances or expenditures by it under any of such documents) and all other payment obligations of the City to the Bank arising under or in relation to this Agreement or the other Financing 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*” 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 and fuel supply, in each case under Power Purchase Agreements, 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, 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 an independent certified public accountant and consultants, 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 and further excluding any repayment obligations under loans to the Community Energy Program from the City or the Authority. Operation and Maintenance Costs shall include all amounts required to be paid by City under take or pay contracts.

“*Operating Reserve Account*” has the meaning set forth in Section 4.11 hereof.

“*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.

“*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, entered into by the City with another Person for the purpose of, or related to, (i) providing working capital or (ii) extending credit to or for the City with respect to any Material Power Purchase Agreement. Notwithstanding anything in the foregoing to the contrary, in no event shall any agreement between the Community Energy Program and the City and/or the Authority relating to the Community Energy Program Commercial Paper constitute an “Other Credit Agreement.”

“*Outstanding Amount*” means (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 L/C Obligations on any date, the aggregate amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the City of Unreimbursed Amounts.

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

“*Permitted Senior Lien*” means any Lien on the Revenues for the benefit of a Person solely to secure the payment of amounts payable by the City to such Person pursuant to the terms of any Power Purchase Agreement which is on a basis senior to the Lien securing the Obligations to the Bank hereunder.

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

“*PGE*” means Pacific Gas and Electric Company, a California corporation.

“*PGE Agreement*” means that certain Electronic Data Interchange Trading Partner Agreement by and between the City and PGE, dated July 23, 2018, as the same may be amended and modified from time.

“*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.

“*Power Purchase Agreement*” has the meaning set forth in Title 26 of the City’s Municipal Code.

“*Prime Rate*” means means, for any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its “*prime rate*.” The “*prime rate*” is a rate set by the Bank based upon various factors including the Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

“*Rating Agencies*” means Fitch, Moody’s and S&P.

“*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.

“*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.

“*Revenues*” means, for any period, all amounts collected and accrued by the City with respect to the Community Energy Program during such period, together with income, earnings and profits therefrom.

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

“*Sanction(s)*” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Scheduled Termination Date*” means [November __, 2023], or such later date as may be established pursuant to Section 9.04 hereof.

“*Start-Up Costs*” means all costs and expenses of the Community Energy Program other than (i) Costs of Issuance and (ii) costs of electric energy or power purchased for the Community Energy Program.

“*State*” means the State of California.

“*Swap Contract*” means (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.

“*Threshold Amount*” means (i) from and including the Effective Date to but not including the Full Utilization Date, an amount equal to two million dollars (\$2,000,000) and (ii) from and including the Full Utilization Date and at all times thereafter, an amount equal to five million dollars (\$5,000,000).

“*Total Outstandings*” means the aggregate Outstanding Amount of all Loans and L/C Obligations; *provided*, that, for the purpose of calculating the Debt Service Coverage Ratio only, after the Full Utilization Date, Total Outstandings shall include an additional amount equal to the principal amount of all outstanding Debt payable from the Community Energy Program to the City or Authority.

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

“*UCP*” means the Uniform Customs and Practice for Documentary Credits in effect from time to time.

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

“*Unreimbursed Amount*” has the meaning specified in Section 2.03(c) hereof.

(c) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms as used in this Agreement or the Note refer to this 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 generally accepted accounting principles as in effect from time to time (“*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 L/C 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. UCC Terms. Terms defined in the UCC in effect on the Effective Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

ARTICLE II

THE COMMITMENT

Section 2.01. Loans. Subject to the terms and conditions set forth herein, the Bank agrees to make loans (individually, a “*Loan*” and collectively, the “*Loans*”) to the City from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time the lesser of the Loan Sublimit and the Commitment, for the purpose of establishing and furthering the Community Energy Program; *provided, however*, that after giving effect to any Borrowing, the (x) Total Outstandings shall not exceed the Commitment, subject to any reductions thereof pursuant to the terms hereof, and (y) the Outstanding Amount of the Loans shall not exceed the Loan Sublimit; *provided further*, until the Community Energy Program has incurred Debt payable to the City and/or the Authority on a combined basis in an aggregate principal amount equal to \$10,000,000, no Loans shall be used, directly or indirectly, to fund Start-Up Costs. 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.

Section 2.02. Borrowings of Loans. (a) Each Borrowing shall be made upon the City’s irrevocable notice to the Bank, which may be given by (A) telephone or (B) a Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to the Bank of a Loan Notice. Each such Loan Notice must be received by the Bank not later than 4:00 p.m. (New York City time) on the third (3rd) Business Day immediately preceding the requested date of any Borrowing (the “*Borrowing Date*”). Each Borrowing shall be in the principal amount of \$250,000 or a whole multiple of \$50,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day) and (ii) the principal amount of the Loan to be borrowed.

(b) Following receipt of a Loan Notice, upon satisfaction of the applicable conditions set forth in Section 3.02 (and, if such Borrowing is the initial Borrowing, Section 3.01), the Bank 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 L/C Obligations, 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 Bank a “Credit Provider” within the meaning of Chapter 4.40 of Title 4 of the City’s Municipal Code.

(d) The Obligations shall be secured and payable in accordance with the provisions of Section 2.14 hereof.

Section 2.03. Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, the Bank agrees (A) from time to time on any Business Day during the period from the Effective Date until the 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 L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Commitment and (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. 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 L/C 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 Bank 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 Bank has approved such expiry date;

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

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

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

(E) except as otherwise agreed by the Bank, the Letter of Credit is in an initial stated amount less than \$500,000;

(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 Bank shall be under no obligation to amend any Letter of Credit if (A) the Bank 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 Bank in the form of a Letter of Credit Application, appropriately completed and signed by an Authorized Officer of the City. Such Letter of Credit Application may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the Bank, by personal delivery or by any other means acceptable to the Bank. Such Letter of Credit Application must be received by the Bank 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 Bank 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 Bank: (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 Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Bank (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 Bank may require. Additionally, the City shall furnish to the Bank such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Documents, as the Bank 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 Bank will also deliver to the City a true and complete copy of such Letter of Credit or amendment.

(c) *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 Bank shall notify the City thereof. Not later than 4:00 p.m. (New York City time) on the date of any payment by the Bank under a Letter of Credit (each such date, an “*Honor Date*”), the City shall reimburse the Bank in an amount equal to the amount of such drawing. If the City fails to so reimburse the Bank by such time on the Honor Date for such drawing, the amount equal to the amount of the unreimbursed drawing (the “*Unreimbursed Amount*”) shall bear interest at the LIBOR Rate. Any notice given by the Bank pursuant to this Section 2.03(c) 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.

(d) *Obligations Absolute.* The obligation of the City to reimburse the Bank 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 Financing 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 Bank 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 Bank of any requirement that exists for the Bank’s protection and not the protection of the City or any waiver by the Bank 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 Bank 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 Bank 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 Bank 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 Bank. The City shall be conclusively deemed to have waived any such claim against the Bank and its correspondents unless such notice is given as aforesaid.

(e) *Role of the Bank.* The Bank and the City agree that, in paying any drawing under a Letter of Credit, the Bank 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 Bank, any of its Related Parties nor any correspondent, participant or assignee of the Bank 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 Bank 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 Bank 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 Bank 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.

(f) *Applicability of ISP and UCP; Limitation of Liability.* Unless otherwise expressly agreed by the Bank 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 Bank shall not be responsible to the City for, and the Bank's rights and remedies against the City shall not be impaired by, any action or inaction of the Bank 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 Bank 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.

(g) *Letter of Credit Fees.* The City shall pay to the Bank a Letter of Credit fee (the “*Letter of Credit Fee*”) equal to 1.75% per annum times the daily amount available to be drawn under such Letter of Credit; *provided*, that upon the occurrence, and at all times during the continuation, of an Event of Default, the Letter of Credit Fee shall increase to 5.75% per annum times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.03. Letter of Credit Fees shall be (A) due and payable on the first Business Day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (B) computed on a quarterly basis in arrears. The City shall also be responsible for the fees and miscellaneous handling charges in connection with the issuance of each Letter of Credit as set forth in the related Letter of Credit Application.

(h) *Letter of Credit Application Fee.* Upon the Bank’s receipt of any Letter of Credit Application, the Bank shall invoice and the City shall pay to the Bank an application fee of \$600 in immediately available funds, which such fee shall be fully earned by the Bank and non-refundable.

(i) *Conflict with City 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 Bank pursuant to delivery to the Bank 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 8.05; *provided* that, unless otherwise agreed by the Bank (A) such notice must be received by Bank 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 8.05.

(b) *Mandatory.*

(i) *Outstandings.* If for any reason at any time the (a) Total Outstandings at any time exceed the Commitment, (b) the L/C Obligations exceed the L/C Sublimit or (c) the Loans exceed the Loan Sublimit, in each case, as applicable, the City shall,

without notice, prepay Loans (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however*, that the City shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.04(b)(i) unless, after the prepayment of the Loans, the Total Outstandings exceed the Commitment 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 Loans, and, *second*, shall be used to Cash Collateralize the remaining L/C Obligations; 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 L/C Obligations 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 Bank.

All prepayments under this Section 2.04(b) shall be subject to Section 8.05, 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.

(a) *Optional.* (i) The City may, upon notice to the Bank, terminate the Commitment, the Loan Sublimit or the Letter of Credit Sublimit or from time to time permanently reduce the Commitment, Loan Sublimit or the Letter of Credit Sublimit; *provided* that (i) any such notice shall be received by the Bank 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 (A) Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Commitment, (B) Letter of Credit Sublimit if, after giving effect thereto and to any concurrent prepayments or Cash Collateralizations hereunder, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit or (C) Loan Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Loans not repaid hereunder would exceed the Loan Sublimit. Failure by the City to designate in the notice required under this Section 2.05(a)(i) whether the Commitment, Loan Sublimit or L/C Sublimit is to be permanently reduced shall be deemed to be a permanent reduction in the Commitment.

(ii) The City hereby agrees to pay to the Bank a Reduction and Termination Fee (as defined below) in connection with any permanent reduction to, or termination or replacement of,

the Commitment, the Loan Sublimit or the L/C Sublimit by the City prior to the first (1st) anniversary of the Effective Date, in an amount equal to the product of (1) the applicable Commitment Fee Rate in effect on the date of such permanent reduction or termination or replacement, (2) the amount of such permanent reduction, termination or replacement of the Commitment, Loan Sublimit or L/C Sublimit, as applicable, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination or replacement to and including the first (1st) anniversary of the Effective Date, and the denominator of which is 360 (the “*Reduction and Termination Fee*”), payable on the date of such termination or replacement; *provided*, that no Reduction and Termination Fee shall be payable by the City if the Commitment is terminated or permanently reduced, as applicable, prior to the first (1st) anniversary of the Effective Date after (i) the Bank requests any amount or amounts necessary to compensate the Bank or its holding company, as the case may be, pursuant to Section 8.01 hereof, (ii) (x) the Bank obtains knowledge of a pending Bail-In Action that the Bank reasonably expects to occur prior to the Scheduled Termination Date or (y) the occurrence of a Bail-In Action or (iii) if the long-term credit rating assigned to the Bank by any of Moody’s, Fitch or S&P is reduced below “A3” (or its equivalent) by Moody’s, “A-” (or its equivalent) by S&P or “A-” (or its equivalent) by Fitch, respectively.

(b) *Letter of Credit Sublimit.* If after giving effect to any reduction or termination of the Commitment under this Section 2.05, the Letter of Credit Sublimit exceeds the Commitment at such time, the Letter of Credit Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

Section 2.06. Repayment of Loans. (The City shall repay to the Bank, on the earlier of (i) the Loan Facility Scheduled Termination Date and (ii) the Commitment Termination Date, the aggregate principal amount of Loans outstanding on such date, together with accrued interest thereon. Subject at all times to Section 2.13 hereof, the City shall repay to the Bank on the Commitment Termination Date all other Obligations payable hereunder.

Section 2.07. Interest and Default Rate.

(a) *Interest.* Subject to the provisions of subsection (b) below, each Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing Date at a rate per annum equal to the LIBOR Rate. The LIBOR Rate shall be effective (i) from the (A) Borrowing Date with respect to any Borrowing and (B) Honor Date with respect to any Unreimbursed Amount of L/C Obligations, in each case to but not including the immediately succeeding LIBOR Reset Date and (ii) thereafter, be effective for the period from and including the immediately succeeding LIBOR Reset Date to but not including the next succeeding LIBOR Reset Date.

(b) *Default Rate.* (i) While any Event of Default exists, the City shall pay interest on all outstanding obligations of the City hereunder (including, without limitation, all Loans) at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) *Interest Payments.* Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any bankruptcy or insolvency proceeding.

Section 2.08. Fees.

(a) *Commitment Fee.* The City shall pay to the Bank a commitment fee (the “*Commitment Fee*”) equal to the sum of:

(i) an amount equal to the product of (A) the Commitment Fee Rate applicable to the Bank’s obligation to make Loans to the City pursuant to Section 2.01 hereof and (B) the greater of (x) zero and (y) the lesser of the Loan Sublimit and \$15,000,000, as applicable, *less* all Loans outstanding and

(ii) an amount equal to the product of (A) the Commitment Fee Rate applicable to the Bank’s obligation to issue Letters of Credit for the account of the City pursuant to Section 2.03 hereof and (B) the greater of (x) zero and (y) the lesser of the L/C Sublimit and \$35,000,000, as applicable, *less* all L/C Obligations outstanding,

in each case as from time to time in effect and computed on the basis of a year of 360 days and the actual number of days elapsed. For the avoidance of doubt, the Commitment Fee shall not apply to the Outstanding Amount of Loans or the amount available to be drawn under outstanding Letters of Credit. The Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article III is not met, and shall be due and payable within thirty (30) calendar days of the first Business Day of each January, April, July and October commencing with the first such date to occur after the Effective Date, and on the Commitment Termination Date. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Commitment Fee Rate during any quarter, the daily actual amount shall be computed and multiplied by the Commitment Fee Rate separately for each period during such quarter that each such Commitment Fee Rate was in effect. The Bank shall provide an invoice to the City stating the Commitment Fees due for each quarterly period in arrears on the first Business Day of each January, April, July and October.

(b) *Amendment Fees.* The City hereby agrees to pay to the Bank, on the date of each amendment to this Agreement or any other Financing Document, a non-refundable fee equal \$5,000, plus, in each case, the reasonable fees and expenses of counsel to the Bank in an amount to be agreed upon by the parties prior to the making of such amendment. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(c) *California Debt and Investment Advisory Commission Fees.* On or before the thirtieth (30th) day immediately following the Effective Date, the City shall have reimbursed the

Bank for the fees paid by the Bank to the California Debt and Investment Advisory Commission in connection with this Agreement, if any.

(d) *Other Fees.* The City shall pay to the Bank such other fees as set forth in Sections 2.03(a), 2.03(h), 8.02(a) and 9.03 hereof and all other fees provided for in this Agreement. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.09. Computation of Interest and Fees. All computations of fees and interest 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 Unreimbursed Amount of an L/C Obligation deemed to be a Loan under Section 2.03(c) hereof) for the day on which such Loan is made, and shall not accrue for the day on which the Loan or such portion is paid, *provided* that any Loan 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 Bank 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 Bank shall be evidenced by one or more accounts or records maintained by the Bank in the ordinary course of business. The accounts or records maintained by the Bank shall be conclusive absent manifest error of the amount of the Borrowings made from the Bank 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 Bank and otherwise duly completed. The Bank 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. All payments to be made by the City 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 Bank shall be made by wire transfer of funds to the following account: **[Barclays Bank PLC, ABA # _____, Account # _____, Reference: # _____, Attention: # _____]**² or as otherwise set forth in the invoice from the Bank for such payment.

Section 2.12. Maximum Interest Rate. If the rate of interest payable hereunder shall exceed the Maximum Interest Rate for any period for which interest is payable, then, to the extent permitted by law, (a) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period, and (b) interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof and (ii) the Maximum Interest Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in

² Note: Bank to provide.

accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time City shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until the earlier of (i) the date of payment in full of all obligations of the City hereunder (other than Excess Interest which has not been recaptured) and on which this Agreement is no longer in effect, and (ii) the date on which all deferred Excess Interest is fully paid to the Bank. Notwithstanding the foregoing, on the date on which no obligation of the City hereunder remains unpaid, to the extent permitted by law, the City shall pay to Bank a fee equal to any accrued and unpaid Excess Interest.

Section 2.13. Cash Collateral.

(a) *Certain Credit Support Events.* If (i) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, or (ii) the City shall be required to provide Cash Collateral pursuant to the terms hereof, the City shall immediately following any request by the Bank, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount except as otherwise provided for herein. Additionally, if the Bank notifies the City at any time that the Outstanding Amount of all L/C Obligations at such time exceeds the Letter of Credit Sublimit then in effect, then within ten (10) Business Days after receipt of such notice, the City shall provide Cash Collateral for the Outstanding Amount of the L/C Obligations in an amount not less than the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit.

(b) *Grant of Security Interest.* The City hereby grants to (and subjects to the control of) the Bank and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.13(c). If at any time the Bank determines in good faith that Cash Collateral is subject to any right or claim of any Person other than the Bank, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the City will, promptly upon demand by the Bank, pay or provide to the Bank additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest-bearing deposit accounts at the Bank. The City shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) *Application.* Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.13 or Sections 2.03, 2.05 or 9.01 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) *Release.* Cash Collateral (or the appropriate portion thereof) provided to secure obligations shall be released promptly following the determination by the Bank that there exists excess Cash Collateral; *provided, however,* (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Financing Documents and the other applicable provisions of the Financing Documents, and (B) the Person providing Cash Collateral and the Bank may agree that Cash Collateral shall not be released but instead held to support future anticipated obligations.

Section 2.14. Payment and Security for Obligations. (a) The Obligations of the City under this Agreement shall be limited obligations, payable solely from the Revenues and amounts on deposit in the Operating Reserve Account.

(b) As security for the Obligations, the City hereby grants to the Bank a (i) pledge of and lien on Revenues subject only to amounts required to be paid by the City pursuant to the terms of the Power Purchase Agreements, which shall not be subject to such Lien, and any Permitted Senior Liens and (ii) pledge of and first-priority lien on all investment property, securities entitlements and money in the Operating Reserve Account.

(c) The pledge created pursuant to paragraph (b) of this Section 2.14 is created in accordance with and pursuant to the provisions of Title 4 of the City's Municipal Code.

(d) The City agrees that it will take such actions, including, without limitation, under the PGE Agreement as are necessary or required so as to enable the City to include (and collect) in the invoices of PGE all amounts necessary to timely pay any Obligations when due to the Bank.

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 Financing Documents and other documents to be delivered to the Bank pursuant to this Section 3.01 shall be subject to prior approval as to form and substance by the Bank, with delivery by the Bank of its signature page to this Agreement evidencing the Bank's acknowledgement that the conditions set forth in this Section 3.01 have been satisfied, unless otherwise waived in writing):

(a) receipt by the City and the Bank of counterparts hereof signed by each of the parties hereto;

(b) receipt by the Bank of an opinion of Jones Hall, A Professional Law Corporation, counsel to the City, in a form satisfactory to the Bank, covering such

matters relating to the transactions contemplated hereby or by the Financing Documents as the Bank may reasonably request;

(c) receipt by the Bank of copies of resolutions of the City authorizing the execution, delivery and performance of this Agreement and the Note and the consummation of the transactions contemplated hereby;

(d) receipt by the Bank of executed copies of each Financing Document and certified copies of each of the Ordinances and the PGE Agreement;

(e) receipt by the Bank of a certificate of an Authorized Officer certifying that (i) each of the City's representations and warranties contained in Article IV hereof is true and correct on and as of the date of such certificate and (ii) no Potential Event of Default or Event of Default has occurred and is continuing;

(f) receipt by the Bank of a certificate of an Authorized Officer certifying as to the authorization and signatures of the officers of the City who are authorized to execute and deliver this Agreement and the Note;

(g) receipt by the Bank of a Form W-9 duly executed by the City;

(h) receipt by the Bank of all unaudited financials of the Community Energy Program prepared prior to the Effective Date, if any;

(i) the City shall have entered into at least two (2) Power Purchase Agreements on or prior to the Effective Date, and the Bank shall have received certified copies of each Power Purchase Agreement in effect as of the Effective Date; and

(j) receipt by the Bank of all opinions, certificates and other documents it may reasonably request relating to the existence of the City, the authority for and the validity of this Agreement and each other Financing Document, and any other matters relevant hereto or thereto, all in form and substance satisfactory to the Bank.

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

(a) The representations and warranties of the City contained in each of Article IV hereof, and which are contained in any document furnished at any time under or in connection herewith or therewith, shall in each case be true and correct on and as of the date of such Borrowing, 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 Borrowing or from the application of the proceeds thereof.

(c) The Bank shall have received a Loan Notice or Letter of Credit Application, as applicable, in accordance with the terms, conditions and requirements hereof.

(d) After giving effect to the proposed Credit Extension, the Total Outstandings shall not exceed the Commitment and, for any Credit Extension to occur on or after the fourth (4th) anniversary of the Effective Date, the City shall be in compliance with Section 5.14(b) hereof on a *pro forma* basis giving effect to such Credit Extension.

(e) Such Credit Extension shall not violate any order, judgment or decree of any court or authority of competent jurisdiction or any provision of law as then in effect.

(f) The Bank shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as the Bank reasonably may require.

Each Loan Notice, 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 Financing 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 Financing 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 Financing 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 Financing 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. Litigation. Except as disclosed in writing to the Bank 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 Financing Document or the validity of the Ordinances.

Section 4.06. Financial Condition. The audited financial statements of each of the City and the Community Energy Program for the fiscal year ended [_____, 2018], plus the unaudited quarterly statements for each of the City and the Community Energy Program, if any, for the current fiscal year, copies of which have been furnished to the Bank have been prepared in conformity with GAAP (except as noted therein) and fairly present, in all material respects, the financial condition of the City and the Community Energy Program, as applicable, as of the dates thereof and there has been no material adverse change in the business or affairs of the City and the Community Energy Program, as applicable, since the date the last such report was so furnished to the Bank.

Section 4.07. Power Purchase Agreements; PGE Agreement. (a) *Power Purchase Agreement.* Each Power Purchase Agreement executed and delivered on or prior to the Effective Date, constitutes a legal, valid and binding agreement of the City, enforceable against the City according to its 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.

(b) *PGE Agreement.* The PGE Agreement constitutes a legal, valid and binding agreement of the City, enforceable against the City according to its 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 4.08. Amendments. None of the Financing Documents have been amended except by such amendments or supplements as have been delivered to the Bank 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 4.09. Security. (a) The Obligations of the City under this Agreement are limited obligations, payable solely from the Revenues and amounts on deposit in the Operating Reserve Account.

(b) The Obligations are secured by (i) a pledge of and lien on Revenues subject only to amounts required to be paid by the City pursuant to the terms of the Power Purchase Agreements, which shall not be subject to such Lien, and any Permitted Senior Liens (ii) a valid and enforceable first-priority pledge of and lien on all investment property, securities entitlements and money held in the Operating Reserve Account, in each case in favor of the Bank.

(c) The pledge created pursuant to Section 2.14(b) of this Agreement is created in accordance with and pursuant to the provisions of Title 4 of the City's Municipal Code and.

(d) The City has taken such actions, including, without limitation, under the PGE Agreement as are necessary or required so as to enable the City to include (and collect) in the invoices of PGE all amounts necessary to timely pay any Obligations when due to the Bank.

Section 4.10. No Defaults. No default by the City has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Debt that is secured by or payable from Revenues including, without limitation, regularly scheduled payments on Swap Contracts. No bankruptcy, insolvency or other similar proceedings pertaining to the City or any agency or instrumentality of the City are pending or presently contemplated. No Potential Event of Default or Event of Default has occurred and is continuing hereunder. No "default" or "event of default" by the City under, and as defined in, any of the other Financing Documents or any Material Power Purchase Agreements has occurred and is continuing. The City is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The City is not in violation of any material term of the organizational documents or authorizing legislation applicable to the City or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

Section 4.11. Operating Reserve Account. The City has created a deposit account identified in Schedule 4.23 attached hereto (the "*Operating Reserve Account*") and such account is and shall at all times be maintained and segregated from all other funds and accounts of the City.

Section 4.12. No Violation of Maximum Interest Rate. Neither this Agreement nor the Note provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

Section 4.13. No Proposed Legal Changes. Except as disclosed in writing to the Bank 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 Financing Documents to which the City is a party.

Section 4.14. 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 on the operations of the City or which might materially adversely affect the ability of the City to comply with its obligations hereunder or under the other Financing Documents to which it is a party or in connection with the transactions contemplated hereby or thereby.

Section 4.15. Environmental Laws. The City has not received notice to the effect that its operations 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 with respect to the assets, financial condition, properties, business or operations of the City, the performance of the obligations of the City under this Agreement or the other Financing Documents to which the City is a party or the security for, or priority of payment of, the Obligations.

Section 4.16. Margin Stock. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no portion of the proceeds of any Loan will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

Section 4.17. Taxes. The City has filed all Federal, state and other material tax returns and reports required to be filed with respect to the Community Energy Program, the non-filing of which could reasonably be expected to result in a Material Adverse Effect, and has paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon the Community Energy Program or the City's properties, income or assets related to the Community Energy Program otherwise due and payable, except those which are

being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the City with respect to the Community Energy Program that would, if made, have a Material Adverse Effect.

Section 4.18. 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 4.19. Incorporation of Representations and Warranties by Reference. The City hereby makes to the Bank the same representations and warranties as are set forth by it in each Financing Document (in the form existing on the date of execution and delivery hereof) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated herein by reference for the benefit of the Bank 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 Financing Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

Section 4.20. 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 4.21. 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 Bank 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 4.22. 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 Bank 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 ten (10) days thereafter, the City will provide to the Bank 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 Bank financial statements (which delivery shall be deemed to have occurred upon such financial statements becoming available at <http://www.sanjosecleanenergy.org/>) 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, accompanied by a letter from an Authorized Officer addressed to the Bank, substantially in the form of Exhibit D hereto, (x) stating that no Potential Event of Default or Event of Default has occurred, or if such an event has occurred, indicating the nature of such event and the action which the City proposes to take with respect thereto and (y) demonstrating compliance with Sections 5.14 and 5.15 hereof as of the end of such fiscal year;

(c) *Quarterly Reports.* Within forty five (45) days after the end of each fiscal quarter of the City, the City will deliver to the Bank (i) 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 Bank) 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 year, (ii) the aggregate principal amount of Community Energy Program Commercial Paper outstanding on such date and (iii) statistics on number of consumers enrolled in Community Energy and energy-usage statistics therefor, the foregoing together accompanied by a letter from an Authorized Officer addressed to the Bank, substantially in the form of Exhibit D attached hereto, (x) stating that no Potential Event of Default or Event of Default has occurred, or if such an event has occurred, indicating the nature of such event and the action which the City proposes to take with respect thereto and (y) demonstrating compliance with Sections 5.14 and 5.15 hereof as of the end of such fiscal quarter;

(d) *Notice of Adverse Change.* As soon as possible after an Authorized Officer acquires knowledge of the occurrence thereof, the City will notify the Bank of (i) the filing of a complaint against the City involving the Community Energy Program with service of process completed in any court or administrative agency, where the amount claimed is in excess of the Threshold Amount, or (ii) any other event which, in the reasonable judgment of the City, is likely to have a Material Adverse Effect;

(e) *Material 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, in each case, caused by the City under any Material Power Purchase Agreement, and in any event within five (5) days thereafter, the City will provide to the Bank 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) *Operating Reserve.* Within fifteen (15) days after the end of each calendar month after the Full Utilization Date, the City shall provide the Bank with a statement indicating the amount of funds on deposit in the Operating Reserve Account; and

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

Section 5.02. Inspections; Discussion. The City will permit the Bank, or its representatives, at any reasonable time during normal business hours and from time to time at the request of the Bank and at its expense (to the extent that City has the legal ability to permit access thereto): to visit and inspect the properties of the City relating to the operations of the Community Energy Program; to examine and make copies of and take abstracts from the records and books of account of the City with respect to the Community Energy Program; and to discuss

the affairs, finances and accounts of the City with the appropriate officers of the City; *provided, however,* that if required by the City, the Bank 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 Bank in evaluating its Commitment. The Bank agrees that all information obtained by it as a result of any such visit, inspection, examination or discussion is confidential and, except as otherwise provided in Section 9.06 hereof, 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. Reserved.

Section 5.04. Preservation of Pledge. The City will take any and all actions necessary or reasonably requested by the Bank to maintain the pledge described in Sections 2.14 and 4.09 hereof.

Section 5.05. 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 indebtednesses, 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 5.06. 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 5.07. Incorporation of Covenants. The covenants of the City set forth in each of the other Financing Documents to which the City is a party are hereby incorporated by reference in this Agreement for the benefit of the Bank. 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 Bank and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Financing Documents shall be effective to amend such incorporated covenants without the prior written consent of the Bank.

Section 5.08. Disclosure to Participants. The City shall permit the Bank to disclose any information received by the Bank 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 5.09. 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 Bank may reasonably request, for the purposes of implementing or effectuating the provisions of the Financing Documents and this Agreement or for the purpose of more fully perfecting or renewing the rights of the Bank 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 5.10. 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 governing the operations or management of the City or the Community Energy Program in a manner that could reasonably be expected to result in a Material Adverse Effect.

Section 5.11. Maintenance of Properties. To the extent necessary to maintain the financial condition of the Community Energy Program, the City will maintain, preserve and keep its property in good repair, working order and condition (ordinary wear and tear excepted).

Section 5.12. 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 than are provided to the Bank in this Agreement without the prior written consent of the Bank.

Section 5.13. Application of Loan Proceeds. The City shall use Credit Extensions (i) in the case of Letters of Credit, to secure payments due under Power Purchase Agreements, (ii) in the case of Loans, to purchase energy for the Community Energy Program and to secure payments due under Power Purchase Agreements, (iii) also in the case of Loans, for payment of Start-Up Costs related to the Community Energy Program in an amount not to exceed \$5,000,000, and (iv) to pay Costs of Issuance; *provided*, that in no event shall any portion of any Credit Extension be used to pay, or in the case of Letters of Credit, to support, the principal of or interest on Commercial Paper or any other Debt payable from the Community Energy Program to the City.

Section 5.14. Debt Service Coverage Ratio. (a) Commencing with the fiscal quarter ended March 31, 2020 and as of the last day of each fiscal quarter ended thereafter, the Debt Service Coverage Ratio shall be not less than 2.00 to 1.

(b) For each date of any proposed Credit Extension, the Debt Service Coverage Ratio shall be not less than 2.00 to 1 on each such date.

Section 5.15. Operating Reserve Requirement. From and including: (a) August 31, 2019, to but excluding November 15, 2019, the City shall at all times during such period maintain not less than \$10,000,000 in the Operating Reserve Account; (b) November 15, 2019, to but excluding the Full Utilization Date, the City shall at all times during such period maintain not

less than \$15,000,000 in the Operating Reserve Account; and (c) the Full Utilization Date and thereafter, the City shall at all times maintain \$20,000,000 in the Operating Reserve Account.

Section 5.16. Operating Reserve Account. The City shall (i) maintain the Operating Reserve Account at all times; (ii) deposit all Net Revenues into the Operating Reserve Account to the extent necessary to comply with Section 5.15 hereof; and (iii) segregate the Operating Reserve Account and amounts on deposit therein from all other funds and accounts of the City.

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. Other Debt. Incur, assume or permit to exist any (i) Debt with a claim to payment from the Net Revenues without written consent of the Bank or (ii) Debt payable from the Community Energy Program to the City or the Authority that would exceed an aggregate principal amount of \$10,000,000.

Section 6.03. Amendments. Except as otherwise permitted herein or expressly consented to in writing by the Bank, (i) consent or agree to, or permit any rescission of or amendment to, or otherwise take any action under or in connection with any Material Power Purchase Agreements that would have a material adverse effect on Net Revenues; (ii) consent or agree to or permit any rescission of or amendment to or otherwise take any action under or in connection with the PGE Agreement which will in any manner materially impair or materially adversely affect the rights of the City thereunder or the City's ability to pay any of its obligations owed to the Bank hereunder or the security for the Obligations hereunder; (iii) 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 Bank in respect thereof; or (iv) amend the City's Municipal Code, by ordinance or any other way, in any way which would have a Material Adverse Effect.

Section 6.04. 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 6.05. Offering Documents. Refer to the Bank in any offering document or make any changes in reference to the Bank in any offering document without the Bank's prior written consent thereto.

Section 6.06. Liens on Revenues or Operating Reserve Account. Create, suffer to exist or permit (i) any Lien on the Revenues other than Permitted Senior Liens and any other Liens created hereunder for the benefit of Bank to secure the payment of the Loans and the other Obligations and (ii) any Lien on amounts on deposit in the Operating Reserve Account other than Liens created hereunder.

Section 6.07. Expenditures from Operating Reserve Account. Release any moneys, securities or entitlements held in the Operating Reserve Account without the prior written consent of the Bank.

Section 6.08. Federal Reserve Board Regulations. Use any portion of the proceeds of a Loan for the purpose of carrying or purchasing any Margin Stock nor incur any Debt which is to be reduced, retired or purchased by the City out of such proceeds.

Section 6.09. Repayment of Obligations to the City or the Authority. Use, or caused to be used, directly or indirectly:

(i) Any portion of the Revenues or Net Revenues for the payment of Debt payable from the Community Energy Program to the City or the Authority, unless (A) the amount held in the Operating Reserve Account is, and after such payment will remain, equal to or in excess of \$20,000,000, (B) the Debt Service Coverage Ratio is not less than 2.00 to 1 as of the last day of the fiscal quarter most recently ended and (C) no Event of Default has occurred and is continuing; or

(ii) The proceeds of a Credit Extension for the payment of any principal amount of, or interest on, the Community Energy Program Commercial Paper or any debt obligation of the City that is secured by or payable from Net Revenues.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an "Event of Default" hereunder, unless waived in writing by Bank:

(a) City shall (i) fail to pay the principal of, or interest on, any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations

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 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 Financing Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Financing 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, 5.03, 5.06, 5.10, 5.13 or 5.16 hereof or in Article VI hereof;

(d) City shall default in the due performance or observance of any term, covenant or agreement contained in Sections 5.14 or 5.15 hereof, and such default shall remain unremedied for sixty (60) days after the earlier of (i) written notice thereof shall have been given to the City by the Bank 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) 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), (c) or (d) 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 Bank 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;

(f) Any material provision of any of the Financing Documents or the Ordinances shall cease to be valid and binding, or the City or any Governmental Authority shall contest any such provision or the City or any agent or trustee on behalf of the City, shall deny that it has any or further liability under any of the Financing Documents or the Ordinances;

(g) (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;

(h) City shall default in the due performance or observance of any material term, covenant or agreement contained in any other Financing Document (other than an Event of Default set forth in Section 7.01(i)(B) hereof) and the same shall not have been cured within any applicable cure period;

(i) (A) City shall fail to pay when due and payable any principal of or interest on any Debt secured by or payable from Revenues or Net Revenues, and such failure shall continue beyond any applicable period of grace specified in any underlying indenture, contract or instrument providing for the creation of or concerning such Debt secured by or payable from Revenues or Net Revenues; or pursuant to the provisions of such indenture, contract or instrument providing for the creation of or concerning such Debt secured by or payable from Revenues or Net Revenues, the maturity of such Debt secured by or payable from Revenues or Net Revenues shall have been accelerated or required to be prepaid prior to the maturity thereof; or (B) the City shall fail to pay when due and payable any amount due and owing under any Power Purchase Agreement pursuant to which the City purchases Power Products, unless the City disputes such payment in good faith, and such failure shall continue beyond any applicable period of grace specified in the Power Purchase Agreement or beyond such good-faith dispute, or any other event shall occur and shall continue after the applicable grace period, if any, specified in the Power Purchase Agreement;

(j) One or more final, unappealable judgments or orders for the payment of money in excess of the Threshold Amount shall be rendered against the City and such judgment or order shall continue unsatisfied and unstayed for a period of 60 days which judgment is payable from Revenues or Net Revenues;

(k) The long-term unenhanced ratings by any of Moody's, Fitch or S&P on any general-obligation bonded indebtedness of the City shall be withdrawn or suspended (but excluding withdrawals or suspensions if the 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;

(l) Any "event of default" under (and as defined in) any Other Credit Agreement or under the documents governing the Community Energy Program

Commercial Paper shall occur and be continuing under such Other Credit Agreement or under the documents governing the Community Energy Program Commercial Paper; or

(m) PGE shall default in the performance of the PGE Agreement and the City shall have failed, within thirty (30) days after the occurrence of such default, to exercise the remedies available to it under the PGE Agreement;

(n) A Material Adverse Effect shall occur with respect to the Community Energy Program or the City's ability to repay Obligations under this Agreement; or

(o) 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 Bank 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 Bank 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 Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto);

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

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

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the City under the Bankruptcy Code of the United States, the obligation of the Bank to make Credit Extensions shall automatically terminate and the unpaid principal amount of all outstanding Loans and Unreimbursed Amounts of L/C Obligations and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the City to Cash Collateralize the L/C Obligations as set forth in Section 7.02(c) hereof, in each case without further act of the Bank.

Section 7.03. Solely for the Benefit of Bank. The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank 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 Bank hereunder or under any of the other Financing Documents.

Section 7.04. Discontinuance of Proceedings. In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the other Financing Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the City and the Bank shall be restored to their former positions with respect to the Obligations, the Financing Documents and otherwise, and the rights, remedies, recourse and powers of the Bank 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 against assets of, deposits with or for the account of, or credit extended or participated in by, the Bank;

(ii) subject the Bank to any 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 Bank or the London interbank market any other condition, cost or expense affecting this Agreement or any Loans made by the Bank or any Letter of Credit;

and the result of any of the foregoing shall be to increase the cost to the Bank with respect to this Agreement, any Loan, or the making, maintenance or funding of any Loan, or to increase the cost to the Bank 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 Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Bank, the City will pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank determines that any Change in Law affecting the Bank or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity or on the capital or liquidity of the Bank's holding company, if any, as a consequence of this Agreement,

the Commitment, the Letters of Credit issued by the Bank, or the Loans made by the Bank to a level below that which the Bank or the Bank's holding company, if any, could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company, if any, with respect to capital adequacy), then from time to time City will pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank'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 Bank 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 Bank would make such demand upon the City. Such certificate of the Bank shall be conclusive absent manifest error. The City shall pay the Bank 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 Bank 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 Bank within ninety (90) calendar days of the date the Bank 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 Bank in a written notice from the Bank 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 Bank makes demand therefor.

(d) *Delay in Requests.* Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided* that City shall not be required to compensate the Bank 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 Bank notifies City of the Change in Law giving rise to such increased costs or reductions and of the Bank'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 Bank by the City hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings imposed as a result of a Change of Law, and all liabilities with respect thereto, excluding taxes imposed on or measured by the net income or capital of the Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Bank and such jurisdiction or political subdivision, other than a connection resulting solely from executing, delivering or performing its obligations or receiving

a payment under, or enforcing, this Agreement (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “*Taxes*”). If as a result of a Change of Law, the City shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 8.02), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) City shall make such deductions and (iii) City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If City shall make any payment under this Section 8.02 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States then the Bank shall pay to the City an amount equal to the amount by which such other taxes are actually reduced; *provided* that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the City with respect to such Taxes. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and, if as a result of a Change of Law, any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the State or the State of New York from any payment made hereunder or from the execution or delivery or otherwise with respect to this Agreement (hereinafter referred to as “*Other Taxes*”). The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the City to the Bank hereunder *provided* that the Bank’s failure to send such notice shall not relieve City of its obligation to pay such amounts hereunder.

(b) *Indemnity.* To the extent permitted by law, the City shall indemnify the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 8.02 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; *provided* that City shall not be obligated to indemnify the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes incorrectly paid by the Bank or arising from the Bank’s gross negligence or willful misconduct. The Bank agrees to give notice to the City of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided* that the Bank’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 Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank 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 Taxes or Other Taxes against any other taxes payable by the Bank to any taxing jurisdiction in the United States) with respect to Taxes or Other Taxes paid by the City pursuant to this Section 8.02 received by the Bank for Taxes or Other Taxes that were paid by the City pursuant to this Section 8.02 and to contest, with the cooperation and at the expense of the City, any such Taxes or Other Taxes which the City reasonably believes not to have been properly assessed.

(c) *Notice.* Within thirty (30) days after the date of any payment of Taxes or Other Taxes by the City, the City shall furnish to the Bank, the original or a certified copy of a receipt evidencing payment thereof. To the extent permitted by law, the City shall compensate the Bank for all reasonable losses and expenses sustained by the Bank as a result of any failure by the City to so furnish such copy of such receipt.

(d) *Survival of Obligations.* The obligations of the City under this Section 8.02 shall survive the termination of this Agreement.

Section 8.03. Illegality. If the Bank determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Bank or its Lending Office to make, maintain or fund any Borrowing whose interest is determined by reference to LIBOR, or to determine or charge interest rates based upon LIBOR, or any Governmental Authority has imposed material restrictions on the authority of the Bank to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by the Bank to the City, any obligation of the Bank to make Loans shall be suspended until the Bank notifies City that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the City shall, upon demand from the Bank, prepay all Loans, either on next succeeding LIBOR Reset Date therefor, if the Bank may lawfully continue to maintain such Loans to such day, or immediately, if the Bank may not lawfully continue to maintain such Loans. Upon any such prepayment, the City shall also pay accrued interest on the amount so prepaid.

Section 8.04. Inability to Determine Rates. If the Bank determines that for any reason in connection with any request for a Loan that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and a one-month period, (b) adequate and reasonable means do not exist for determining the LIBOR for any requested in connection with an existing or proposed Loan, or (c) LIBOR does not adequately and fairly reflect the cost to the Bank of funding the Loans, the Bank will promptly so notify City. Thereafter, the obligation of the Bank to make or maintain Loans shall be suspended, until the Bank revokes such notice. Upon receipt of such notice, the City may revoke any pending request for a Borrowing of Loans.

Section 8.05. Compensation for Losses. Upon demand of the Bank from time to time, the City shall promptly compensate the Bank for and hold the Bank harmless from any loss, cost or expense incurred by it as a result of:

(a) any payment or prepayment of any Loan, the interest on which is determined by reference to LIBOR on a day other than the LIBOR Reset Date (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by the City (for a reason other than the failure of the Bank to make a Loan) to prepay or borrow any Loan on the date or in the amount notified by the City;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The City shall also pay any customary administrative fees charged by the Bank in connection with the foregoing.

For purposes of calculating amounts payable by the City to the Bank under this Section 8.05, the Bank shall be deemed to have funded each Loan made by it at LIBOR for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

Section 8.06. 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, 3 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 Bank under Article II shall not be effective until received:

If to the City, to:

City of San Jose, California
200 East Santa Clara Street, 13th Floor
San Jose, California 95113
Attention: Lori Mitchell
Telephone: 408-535-4880
Email: lori.mitchell@sanjoseca.gov

With a copy to:

City of San Jose, California
200 East Santa Clara Street, 13th Floor

San Jose, California
Attention: Julia Cooper
Telephone: 408-535-7001
Email: Julia.cooper@sanjose.gov

If to the Bank for Loans:

Barclays Bank PLC
[Address]
Attention:
Telephone:
Email:

If to the Bank for the application for a Letter of Credit:

Barclays Bank PLC, New York Branch
745 Seventh Avenue
19th Floor
New York, New York 10019
Attention: Letters of Credit Department
Email: xraLetterofCredit@barclays.com

If to the Bank for all other purposes:

Barclays Bank PLC
745 Seventh Avenue
19th Floor
New York, New York 10019
Attention: Cassandra Bolz
Telephone: 212-526-3974
Email: Cassandra.bolz@barclays.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 Bank 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; Documentary Taxes; Indemnification. (a) City shall pay (i) the reasonable fees of counsel for the Bank (not to exceed \$70,000), in connection with the initial negotiation, preparation and execution of this Agreement and the other Financing Documents, (ii) the reasonable fees of counsel for the Bank in connection with any 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 Bank, 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. If and to the extent permitted by applicable law, the City shall indemnify the Bank against any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement. In no event shall City have any obligation for any fees or expenses incurred by the Bank in connection with any assignment made or participation granted pursuant to Section 9.05 hereof.

(b) The City hereby agrees to indemnify the Bank and hold the Bank 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 Bank in connection with any investigative, administrative or judicial proceeding relating to or arising out of this Agreement or any other Financing Document or any actual or proposed use of proceeds of Loans hereunder (including any refusal by the Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit); *provided* that the Bank shall not have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by 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 Bank.

Section 9.05. Successors and Assigns; Participations; Information. (a) This Agreement is binding on the City's and the Bank's successors and assignees. The City agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign the Loans, and may exchange information about City (including, without limitation, any information regarding any hazardous substances) with actual or potential participants or assignees. If a participation is sold or the Loans are assigned, the purchaser will have the right of set-off against the City; *provided, however*, that (i) no such participation by any such participant shall in any way affect the obligations of the Bank hereunder; and (ii) with respect to any participation, the City shall be required to deal only with the Bank with respect to any matters under this Agreement and the other Financing Documents and no such participant shall be entitled to enforce any provision hereunder against the City. The City agrees that each participant shall be entitled to the benefits of Sections 8.01, 8.02 and 8.03 hereof to the same extent as if it were the Bank hereunder; *provided, however*, that a participant shall not be entitled to receive any greater payment under Sections 8.01 and 8.02 than the Bank would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with City's prior written consent.

(b) *Certain Pledges.* In addition to the rights of the Bank set in subsection (a) of this Section 9.05, the Bank may at any time pledge or assign a security interest in all or any portion of its rights or interests under this Agreement (including under its Note, if any) to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure

obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

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

Section 9.06. 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 9.07. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York; *provided*, that the power and authority of the City to execute, deliver and perform its obligations under this Agreement shall be governed by the Laws of the State; *provided, however*, that the power and authority of the City to enter into any and all Power Purchase Agreements and such agreements themselves are governed by the laws of the State unless otherwise provided therein.

Section 9.08. Jurisdiction; Venue; Waiver of Jury Trial. (a) With respect to any suit, action or proceeding relating to, or arising from, this Agreement, each party hereto irrevocably submits to the nonexclusive jurisdiction of the courts of the State of California and the federal courts located in the State of California and agrees that any such suit, action or proceeding shall be had and maintained in the courts of the State of California or the federal courts located in the State of California.

(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 9.09. Payments Set Aside. To the extent that any payment by or on behalf of the City is made to the Bank, or the Bank 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 Bank 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 9.10. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Financing 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 Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank 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 Commitment Termination Date.

Section 9.11. Severability. If any provision of this Agreement or the other Financing 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 Financing 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 9.12. 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 services regarding this Agreement provided by the Bank and any Affiliate thereof are arm's-length commercial transactions between City, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) City has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) City is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the Note; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal 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 Bank 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 Bank 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 Bank 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 Bank 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 9.13. Electronic Execution of Certain Documents. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Financing Document or any other document executed in connection herewith shall be deemed to include facsimile signatures and signatures in portable document format (i.e., a PDF) , the electronic matching of assignment terms and contract formations on electronic platforms approved by the Bank, or the keeping of records in electronic form, 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, to the extent and as provided for in any applicable Law.

Section 9.14. USA Patriot Act. The Bank 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 Bank to identify City in accordance with the Patriot Act. The City agrees to, promptly following a request by the Bank, provide all such other documentation and information that the Bank 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.

Section 9.15. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. (a) The City acknowledges and agrees that notwithstanding any other term of this Agreement or any other agreement, arrangement or understanding with the Bank, any liability arising under or in connection with this Agreement (including, without limitation, any liability arising out of or in connection with the Letter of Credit) may be subject to Bail-In Action and the City accepts to be bound by the effect of:

(i) any Bail-In Action in relation to such liability, including (without limitation):

(A) a reduction, in full or in part, of any amount due in respect of any such liability;

(B) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, the City; and

(C) a cancellation of any such liability; and

(ii) a variation of any term of this Agreement or a Letter of Credit to the extent necessary to give effect to Bail-In Action in relation to any such liability.

(b) Promptly upon obtaining knowledge of any expected occurrence of a Bail-In Action, the Bank shall use commercially reasonable efforts to deliver to the City notice thereof describing (i) the expected occurrence of such Bail-In Action, including in

reasonable detail the anticipated effects thereof on the Bank and the City, and their respective obligations under this Agreement, and (ii) the anticipated date of such Bail-In Action.

[SIGNATURE PAGES TO FOLLOW]

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: _____
Title: _____

BARCLAYS BANK PLC

By: _____
Name: Cassandra Bolz
Title: Director

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 **[\$50,000,000]**

[November __, 2018]

FOR VALUE RECEIVED, the undersigned CITY OF SAN JOSÉ, CALIFORNIA (the “City”), hereby promises to pay to BARCLAYS BANK PLC, or its registered assigns (the “Bank”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal outstanding amount of all Unreimbursed Amounts related to Letters of Credit and each Loan from time to time made by the Bank to the City, in each case under that certain Revolving Credit Agreement, dated as of **[November __, 2018]** (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*,” the terms defined therein being used herein as therein defined), between the City and the Bank, in accordance with the terms of the Agreement.

The City promises to pay interest on the unpaid principal amount of each Loan and Unreimbursed Amount 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 Bank in Dollars in immediately available funds at the Bank’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. The Loans made by the Bank and Unreimbursed Amounts shall be evidenced by one or more loan accounts or records maintained by the Bank in the ordinary course of business. The Bank may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and Unreimbursed Amounts and payments with respect thereto.

The Bank, 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 SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *PROVIDED*, THAT THE POWER AND AUTHORITY OF THE CITY TO EXECUTE, DELIVER AND PERFORM ITS OBLIGATIONS UNDER THIS NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF LOAN NOTICE

Date: _____, 201_

To: Barclays Bank PLC
745 Seventh Avenue, 19th Floor
Attention: Cassandra Bolz
Telephone: 212-526-3974
Email: Cassandra.bolz@barclays.com

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of November 1, 2018 (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 Barclays Bank PLC (the “*Bank*”).

The undersigned hereby requests a Borrowing of Loan:

1. On _____ (a Business Day).
2. In the amount of \$ _____.
3. The proceeds of the Borrowing shall be applied to:

[Start-Up Costs]

[purchase energy for the Community Energy Program]

[secure payments due under Power Purchase Agreements]

4. To the account set forth below in the Agreement.

The Borrowing requested herein complies with the proviso to the first sentence of Section 2.01 of the Agreement.

City hereby represents and warrants that the conditions specified in Section 3.02 of the Agreement shall be satisfied on and as of the date of the Borrowing requested herein.

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 C

FORM OF NOTICE OF LOAN PREPAYMENT

To: Barclays Bank PLC, as lender (the “Bank”)

RE: Revolving Credit Agreement, dated as of November 1, 2018, by and between City of San Jose, California (the “City”) and the Bank (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 Bank that on _____³ 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): \$ _____⁴

³ Specify date of such prepayment.

⁴ Any prepayment shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 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 COMPLIANCE CERTIFICATE

Financial Statement Date: _____, _____

To: Barclays Bank PLC, as Bank

Ladies and Gentlemen:

Reference is made to that certain Revolving Credit Agreement, dated as of November 1, 2018 (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 Barclays Bank PLC, (the "*Bank*").

The undersigned Authorized Officer hereby certifies as of the date hereof that he/she is the _____ of the City, and that, as such, he/she is authorized to execute and deliver this Certificate to the Bank on the behalf of the City, and that:

[1. The financial statements required by Section 5.01(b) of the Agreement and having been posted to <http://www.sanjosecleanenergy.org/>) fairly represent the consolidated financial condition of the Borrower in accordance with GAAP (subject to year-end adjustments) as of the dates and for the periods covered thereby.]

[1. The financial statements required by Section 5.01(c) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP (subject to year-end adjustments) as of the dates and for the periods covered thereby.]

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the City during the accounting period covered by the attached financial statements.

3. A review of the activities of the City during such period has been made under the supervision of the undersigned with a view to determining whether during such period the City performed and observed all its obligations under the Agreement and the Note, and

[select one:]

[to the best knowledge of the undersigned during such fiscal period, the City performed and observed each covenant and condition of the Agreement and the Note applicable to it, and no Potential Event of Default or Event of Default has occurred and is continuing.]

--or--

[the following covenants or conditions have not been performed or observed and the following is a list of each such Potential Event of Default or Event of Default and its nature and status:]

4. The representations and warranties of the City contained in Article IV of the Agreement, and/or any representations and warranties of the City that are contained in any document furnished at any time under or in connection with the Agreement and the Note, are true and correct on and as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____, _____.

CITY OF SAN JOSE, CALIFORNIA

By: _____
Name: _____
Title: _____

[CITY TO PROVIDE CALCULATIONS FOR BANK'S REVIEW]

SCHEDULE 4.11

OPERATING RESERVE ACCOUNT

[City to Provide]