

FIRST AMENDMENT TO REVOLVING CREDIT AGREEMENT

This FIRST AMENDMENT TO REVOLVING CREDIT AGREEMENT (this "*Amendment*") is dated _____, 2019 (the "*Amendment Date*"), between the CITY OF SAN JOSE, CALIFORNIA (the "*City*"), and BARCLAYS BANK PLC (together with its successors and assigns, the "*Bank*"). All capitalized terms herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City and the Bank have previously entered into that certain Revolving Credit Agreement dated as of November 1, 2018 (the "*Agreement*"), related to a community-wide electricity program known as "San Jose Clean Energy";

WHEREAS, pursuant to Section 9.04 of the Agreement, the Agreement may be amended by a written amendment thereto executed by the City and the Bank; and

WHEREAS, the City has requested that the Bank increase its Commitment to \$80,000,000 and consent to certain amendments to the Agreement, and the Bank has agreed to increase its Commitment and consent to the amendments to the Agreement subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

SECTION 1. AMENDMENT.

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement is hereby amended as follows:

1.01. The definitions of "*Applicable Spread*," "*Available Commitment*," "*Commitment*," "*Commitment Fee Rate*," "*Letter of Credit Sublimit*," "*Loan Sublimit*," and "*Note*" in Section 1.01 of the Agreement are hereby amended and restated in their entireties and as so amended shall read as follows:

"Applicable Spread" means (i) for the period commencing on the Effective Date, to but not including the Amendment Date, a rate per annum equal to 2.10%, and (ii) for the period commencing on the Amendment Date, and at all times thereafter, a rate per annum equal to 2.90%.

"Available Commitment" means (A) for the period commencing on the Effective Date, to but excluding the Amendment Date, 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, and (B) for the period commencing on the Amendment Date, and at all times thereafter, an initial amount equal to \$80,000,000 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) \$80,000,000 from the Effective Date to but excluding Loan Facility Scheduled Termination Date, and (ii) \$65,000,000 from and after the Loan Facility Scheduled Termination Date.

“*Commitment*” means (i) for the period commencing on the Effective Date, to but not including the Amendment Date, 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, and (ii) for the period commencing on the Amendment Date, and at all times thereafter, 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 \$80,000,000, (y) Loan Facility Scheduled Termination Date and at all times thereafter shall be \$65,000,000.

"Commitment Fee Rate" means (i) for the period commencing on the Effective Date, to but not including the Amendment Date, (A) 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 (B) 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%, and (ii) for the period commencing on the Amendment Date, and at all times thereafter, a rate per annum equal to 1.00%; provided, that upon the occurrence, and at all times during the continuation, of an Event of Default, the Commitment Fee Rate shall increase by four percent (4.0%) per annum above the Commitment Fee Rate otherwise in effect.

"Letter of Credit Sublimit" means (i) for the period commencing on the Effective Date, to but not including the Amendment Date, an amount equal to the lesser of (A) \$35,000,000 and (B) the Commitment, and (ii) for the period commencing on the Amendment Date, and at all times thereafter, an amount equal to the lesser of (A) \$65,000,000 and (B) the Commitment. The Letter of Credit Sublimit is part of, and not in addition to, the Commitment.

"Loan Sublimit" means (i) for the period commencing on the Effective Date, to but not including the Amendment Date, an amount equal to the lesser of (A) \$20,000,000 and (B) the Commitment, and (ii) for the period commencing on the Amendment Date, and at all times thereafter, an amount equal to the lesser of (A) \$30,000,000 and (B) the Commitment. The Loan Sublimit is part of, and not in addition to, the Commitment.

“*Note*” means that certain Note dated the Amendment 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.

1.02. Section 1.01 of the Agreement is hereby amended by the addition of the terms “*Amendment Date*,” “*First Amendment*,” and “*Operating Reserve Requirement*” each to be inserted in the appropriate place in the alphabetical sequence and to read as follows:

“*Amendment Date*” means _____, 2019.

“*First Amendment*” means the First Amendment to Revolving Credit Agreement dated _____, 2019, between the City and the Bank, amending the Agreement.

“*Operating Reserve Requirement*” means, with respect to the applicable period provided for in Section 5.15 hereof, the amount required to be on deposit in the Operating Reserve Account during such period as provided in such Section 5.15.

1.03. Section 2.01 of the Agreement shall be amended by adding the following sentence immediately thereafter:

For the avoidance of doubt, the City may borrow Loans the proceeds of which are deposited into the Operating Reserve Account, and to the extent so on deposit in the Operating Reserve Account, shall be taken into account when calculating the balance thereof for purposes of Section 5.16.

1.04. Section 2.03(g) of the Agreement is hereby amended and restated in its entirety and as so amended shall read as follows:

(g) *Letter of Credit Fees.* The City shall pay to the Bank (i) for the period from the Effective Date, to but not including the Amendment Date, a Letter of Credit fee equal to 1.75% per annum times the daily amount available to be drawn under each such Letter of Credit during such period, and (ii) for the period from and including the Amendment Date, and at all times thereafter, a Letter of Credit fee equal to 1.95% per annum times the daily amount available to be drawn under each such Letter of Credit (collectively, the “*Letter of Credit Fee*”); *provided*, that upon the occurrence, and at all times during the continuation, of an Event of Default, the Letter of Credit Fee shall increase by 4.00% per annum above the fee otherwise applicable. 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 computed on a quarterly basis in arrears for the quarterly period ending on March 31, June 30, September 30, and December 31 of each year, and for the period ending on the Commitment Termination Date; *provided, that*, the City shall be obligated to pay such fees only upon the delivery to the City of an invoice from the Bank upon the completion of each

such quarterly period and such invoiced amount shall be due and payable by the City within thirty (30) days following the delivery of such invoice. 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.

1.05. Section 2.04(b) of the Agreement is hereby amended by the addition of 2.04(b)(iii) which shall read as follows:

(iii) Notwithstanding anything herein to the contrary, if the aggregate Outstanding Amount of Loans is in excess of the Operating Reserve Requirement as of August 30, 2020, then the City must repay in equal monthly installments the principal amount of such excess with the final principal installment equal to the balance of such excess and payable by the earlier of (a) the Loan Facility Scheduled Termination Date and (b) the Commitment Termination Date. For purposes of illustration only, if the aggregate Outstanding Amount of Loans as of August 30, 2020 is \$30,000,000, such excess would be equal to \$10,000,000 (the “Excess Amount”) and would be payable in monthly principal installments of \$714,285.71, together with accrued interest thereon, with the principal balance of such Excess Amount payable in full on the earlier of (A) the Loan Facility Scheduled Termination Date and (B) the Commitment Termination Date.

1.06. Section 2.09 of the Agreement is hereby amended and restated in its entirety and as so amended shall read as follows:

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) for the day on which such Loan is made (or, in the case of Unreimbursed Amounts, the day on which a related drawing is not reimbursed), and shall not accrue for the day on which the Loan or such portion is paid, *provided* that any Loan (or Unreimbursed Amount, if applicable) that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one day. Each determination by the Bank of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

1.07. Section 2.08(a) of the Agreement is hereby amended and restated in its entirety and as so amended shall read as follows:

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

(i) for the period from and including the Effective Date, to but not including the Amendment Date, the sum of:

(x) 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

(y) 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 Letter of Credit Sublimit and \$35,000,000, as applicable, less all L/C Obligations outstanding; and, then

(ii) for the period from and including the Amendment Date, and at all times thereafter, an amount equal to the product of (A) the Commitment Fee Rate and (B) the Available Commitment.

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. 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 deliver 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; *provided, that*, the City shall be obligated to pay such Commitment Fees only upon the delivery to the City of an invoice from the Bank and such invoiced amount shall be due and payable within thirty (30) days following the delivery of such invoice.

1.08. Exhibit A to the Agreement is hereby amended in its entirety and as so amended shall be restated to read as set forth in Exhibit A hereto.

1.09. Exhibit D to the Agreement is hereby amended in its entirety and as so amended shall be restated to read as set forth in Exhibit B hereto.

SECTION 2. CONDITIONS PRECEDENT.

This Amendment shall be effective as of the Amendment Date subject to the satisfaction of or waiver by the Bank of all of the following conditions precedent:

2.01. Delivery by (i) the City and the Bank of an executed counterpart of this Amendment and (ii) the City of an executed Note in the form set forth as Exhibit A hereto.

2.02. Receipt by the Bank of an opinion of Jones Hall, a Professional Law Corporation, counsel to the City, addressed to the Bank in form and substance satisfactory to the Bank with respect to the transactions contemplated hereby.

2.03. Receipt by the Bank of a certified copy of the authorizing resolution of the City approving the execution and delivery of this Amendment and authorizing the performance of the City's obligations under the Agreement, as amended hereby, and the Note.

2.04. Receipt by the Bank of a certificate of an Authorized Representative of the City, certifying the names and true signatures of the officers of the City authorized to execute and deliver, and that have executed and delivered this Amendment and Note.

2.05. Payment to Chapman and Cutler LLP of the reasonable legal fees and expenses of counsel to the Bank in an amount not to exceed \$15,000.

2.06. Delivery by the Bank to the City of the cancelled original Note executed by the City dated November 27, 2018.

2.07. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to the Bank and its counsel.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

3.01. The City hereby represents and warrants that the following statements are true and correct as of the Amendment Date:

(a) the representations and warranties contained in Article IV of the Agreement and in each certificate or other writing delivered to the Bank pursuant thereto on or prior to the Amendment Date shall be true and correct on, and deemed made on, and as of the Amendment Date (except to the extent the same expressly relate to an earlier date); and

(b) after giving effect to this Amendment, no Potential Event of Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

3.02. In addition to the representations given in Article IV of the Agreement, the City hereby represents and warrants as follows:

(a) The execution, delivery and performance by the City of this Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the City;

(b) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Amendment or the Agreement, as amended hereby; and

(c) this Amendment has been duly authorized, executed and delivered by the City and this Amendment and the Agreement, as amended hereby, constitute legal, valid

and binding obligations of the City enforceable against the City in accordance with their terms subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations of remedies against departments of the State of California.

SECTION 4. MISCELLANEOUS.

4.01. Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. THIS AMENDMENT, 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 AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA; *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.

4.02. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective authorized officers as of the Amendment Date.

CITY OF SAN JOSE, CALIFORNIA

By: _____

Name:

Title:

BARCLAYS BANK PLC

By: _____

Name:

Title:

Signature Page to First Amendment 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 \$80,000,000

_____, 2019

FOR VALUE RECEIVED, the undersigned CITY OF SAN JOSE, 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 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 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.

This Note amends, restates, and supersedes that certain Note dated November 27, 2018 (the “Original Note”), executed and delivered by the City to the Bank, and the Original Note is of no further force and effect.

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 A to First Amendment to Revolving Credit Agreement

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

EXHIBIT B

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 (having been posted to <http://www.sanjosecleanenergy.org/>) and being furnished to you concurrently with this certificate fairly represent the financial condition of the Community Energy Program in accordance with GAAP as of the dates and for the periods covered thereby.]

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

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]